



# COMMONWEALTH of VIRGINIA

Office of the Attorney General

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The Honorable James W. Morefield  
Member, House of Delegates  
Post Office Box 828  
North Tazewell, Virginia 24630

Dear Delegate Morefield:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

## Issues Presented

You ask several questions regarding the application of § 46.2-1143, which provides for the issuance of overweight permits for vehicles hauling coal or coal byproducts to and from coal mines to specified destinations.<sup>1</sup> Specifically, you first ask whether a six-axle vehicle permitted under the section is allowed to have a gross vehicle weight of 110,000 pounds. You next ask whether a permitted vehicle is exempt from being weighed if certain conditions are met. Finally, you inquire whether a vehicle is presumed to be within prescribed gross weight limits, regardless of actual weight, if either 1) the vehicle's load clearly is within the established load size limits for the vehicle, or 2) the operator of the vehicle, when stopped by enforcement officials for a potential load violation, can shift the load contained in the bed so that the load does not rise above the truck bed or line.

## Response

It is my opinion that § 46.2-1143 allows for a six-axle vehicle used exclusively for hauling coal or coal byproducts to have a gross vehicle weight of 110,000 pounds, but no more than that, provided that the vehicle has a valid overweight permit, is loaded at the time and has its weight distributed over the axles as required by the statute. It is further my opinion that § 46.2-1143 does not "exempt" any truck from being weighed and does not create a "presumption" of weight beyond the evidentiary standard to be applied in a court of law.

## Applicable Law and Discussion

Section 46.2-1126 establishes generally the gross weight limitations and measuring standards for vehicles traveling on Virginia highways. Notwithstanding these general provisions, the Code allows certain otherwise overweight vehicles to operate pursuant to an appropriate permit. Particular to your inquiry, § 46.2-1143 authorizes "vehicles used exclusively for hauling coal or coal byproducts from a mine or other

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<sup>1</sup> The current version of § 46.2-1143 is in effect until January 1, 2013. The amendments that take effect on that date do not affect this opinion's analysis or conclusion. *See* 2012 Va. Acts ch. 443.

place of production to a preparation plant, electricity-generation facility, loading dock, or railroad . . . to operate with gross weights in excess of those established in § 46.2-1126 on the conditions set forth” therein. Permits to operate such overweight vehicles are available provided the prescribed conditions, which impose restrictions on gross weight, bed size and travel distances, are met.<sup>2</sup>

Relevant to your first inquiry is § 46.2-1143(B), which provides in pertinent part that, “vehicles with six axles may have a *maximum gross weight, when loaded, of no more than 110,000 pounds*, a single axle weight or no more than 24,000 pounds, a tandem axle weight of no more than 44,000 pounds, and a tri-axle weight or no more than 54,500 pounds.”<sup>3</sup> When a statute is unambiguous, it is to be construed according to its plain language.<sup>4</sup> Section 46.2-1143(B) clearly establishes 110,000 pounds as the maximum gross weight permitted for six-axle vehicles hauling coal. The Code does not otherwise define “maximum” or “no more than,” so these terms must be afforded their ordinary meaning.<sup>5</sup> “Maximum” means “the greatest quantity or value attainable or attained” or “an upper limit allowed (as by a legal authority) or allowable[.]”<sup>6</sup> The phrase “no more than,” in this context, in turn signifies the weight limit the load can reach, but may not exceed. Therefore, the vehicle may carry a gross vehicle weight of 110,000 pounds, but it may not exceed that weight.<sup>7</sup>

In response to your remaining questions, as an initial matter, I provide the following statutory context. In addition to imposing the above weight restrictions, § 46.2-1143 limits the size of the load allowed to be carried by permitted vehicles. It establishes maximum load volumes dependent on the type of vehicle and expressly provides that “[n]o load of any vehicle operating under a permit issued according to this section shall rise above the top of the bed of such vehicle, not including extensions of the bed.”<sup>8</sup> “Bed” is then defined as “that part of the vehicle used to haul coal”<sup>9</sup> and the law sets forth how it is to be measured.<sup>10</sup> If a vehicle’s actual cargo bed exceeds the maximum allowable load size, the operator must paint a horizontal line on the side of the bed and cut holes in it to indicate where the uppermost limit of the bed should be.<sup>11</sup> In such instances, no load of coal shall rise above the properly measured lines.<sup>12</sup>

Notably, these size restrictions are distinct from the weight restrictions. Operation of permitted vehicles is subject to each of the conditions set forth in § 46.2-1143, as provided in § 46.2-1143(A). Section 46.2-1143(B) contains no exemptions from the weight requirement it establishes, nor does § 46.2-1143(C) or (D) include language indicating that compliance with load/bed size satisfies or supersedes the weight

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<sup>2</sup> VA. CODE ANN. § 46.2-1143(B), (C-E), (G) (Supp. 2012) (weight, size and distance, respectively).

<sup>3</sup> Emphasis added.

<sup>4</sup> See, e.g., *Signal Corp. v. Keane Fed. Sys., Inc.* 265 Va. 38, 46-47, 574 S.E.2d 253, 257 (2003).

<sup>5</sup> See *Grant v. Commonwealth*, 223 Va. 680, 684, 292 S.E.2d 348, 350 (1982).

<sup>6</sup> MERRIAM WEBSTER’S COLLEGIATE DICTIONARY 717 (10th ed. 1998).

<sup>7</sup> I further note that an operator may have a loaded six-axle vehicle that weighs 110,000 pounds, provided the operator has been issued a permit and the load complies with applicable size restrictions and is evenly distributed over all the axles as set out in the Code.

<sup>8</sup> Section 46.2-1143(C).

<sup>9</sup> Section 46.2-1143(D).

<sup>10</sup> *Id.* (“Bed size shall be measured by its interior dimensions with volume expressed in cubic feet.”) (Effective January 1, 2013, this provision will read: “Bed size shall be based on its interior dimensions, which may be determined by measuring the exterior of the bed, with volume expressed in cubic feet.” 2012 Va. Acts ch. 443).

<sup>11</sup> Section 46.2-1143(D). Penalties for having an oversize truck bed or altering the measured painted horizontal line and holes required are set forth in § 46.2-1143(E).

<sup>12</sup> See § 46.2-1143(C).

restriction. Moreover, the Code treats the penalties for weight and size violations separately: weight violations are subject to the penalties provided in §§ 46.2-1131 and 46.2-1135, while the penalties for violations relating to bed size are set forth in § 46.2-1143(D) and (E). As such, although an operator may shift his load to attempt to comply with the load restrictions of § 46.2-1143(F), this effort, whether successful or not, will have no bearing on the weight restrictions of § 46.2-1143(B).

Thus, in response to your second inquiry -- whether a vehicle used exclusively for hauling coal or coal byproducts from a mine to one of the destinations enumerated in § 46.2-1143(A) is exempt from being weighed for any potential weight violations if the load it is carrying comports with the applicable bed-size restrictions -- I conclude that the Code provides no such exemption. First, nothing in § 46.2-1143 refers to the ability of law enforcement actually to weigh any vehicle subject to its strictures. Nowhere does the General Assembly exclude any coal trucks, whether they have a load rising above or falling below the bed lines, from being weighed. Rather, the Code expressly provides that “[a]ny officer or size and weight compliance agent authorized to enforce the law under [Title 46.2], having reason to believe that the weight of a vehicle and load is unlawful, is authorized to weigh the load and the vehicle.”<sup>13</sup> This authority extends to allowing the enforcement officer to require the vehicle to proceed to a nearby weighing station, if within 10 miles, or to submit to weighing the vehicle by wheel load weighers.<sup>14</sup> Although loads appearing to exceed the permitted bed size may give rise to a reason to weigh the vehicle, a vehicle may be subject to weighing if an enforcement officer has reason to believe it is overweight, regardless of whether its load may be within the applicable size limits.

Similarly, in response to your final inquiry, § 46.2-1143 grants no “weight presumption” to permitted vehicles based on the ability of their loads to comply with size restrictions. Although § 46.2-1143(F) provides that any vehicle whose load does not rise above the top of the bed or over the line indicating the bed’s maximum size “shall be, in the absence of proof to the contrary, prima facie evidence that the load is within applicable weight limits,” such provision does not constitute an exemption from any weight requirements or a presumption that the vehicle is in compliance with them. Rather, “prima facie evidence” refers only to an evidentiary standard used in a court of law:<sup>15</sup> it is “evidence which on its first appearance is sufficient to raise a presumption of fact or establish the fact in question unless rebutted. It imports that the evidence produces for the time being a certain result, but that the result may be repelled.”<sup>16</sup> Thus, vehicles charged with weight violations tried in court are afforded an evidentiary standard that provides that, if the load does not rise above the bed or the line, then a rebuttable presumption arises that the load is below the weight limits. This standard applies regardless of whether an operator was in compliance with the size restrictions, with or without an having to shift his load.

Thus, should an operator be charged with carrying an overweight load, this standard provides that during any trial of the matter, the operator is granted a rebuttable presumption that the load was not overweight. Prima facie evidence dictates that this presumption can be rebutted by other evidence. One key method of obtaining such evidence would be by actually weighing the truck. Interpreting § 46.2-1143 to find that vehicle weight enforcement officials are precluded from weighing the trucks would, in effect, create an impermissible “absurd result.”<sup>17</sup> If there were an inability to weigh potentially overweight vehicles, there

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<sup>13</sup> Section 46.2-1137 (Supp. 2012).

<sup>14</sup> *Id.*

<sup>15</sup> Contested allegations of weight violations are to be tried as civil cases. Section 46.2-1133(7) (Supp. 2012).

<sup>16</sup> *Babbitt v. Miller*, 192 Va. 372, 379-380, 64 S.E.2d 718, 722 (1951).

<sup>17</sup> When interpreting a statute, courts must look to “[t]he plain language used by the legislature . . . unless that language is ambiguous or otherwise leads to an absurd result.” *Reston Hosp. Ctr., LLC v. Remley*, 59 Va. App. 96,

would never be any possibility of any contrary evidence in these cases and that would make the concept of “prima facie evidence” meaningless. Furthermore, it would open the door to operators carrying fraudulent loads that might contain layers of coal on top and other, heavier materials, on the bottom; thus never being detected as the loads would never be subject to any appropriate scrutiny. In sum, because “prima facie evidence” and associated presumptions concern only court proceedings, officials enforcing weight restrictions on the roadways are not bound by thereto and may weigh vehicles and issue citations for violations as circumstances dictate.

#### Conclusion

Accordingly, it is my opinion that § 46.2-1143 allows for a six-axle vehicle used exclusively for hauling coal or coal byproducts to have a gross vehicle weight of 110,000 pounds, but no more than that, provided that the vehicle has a valid overweight permit, is loaded at the time and has its weight distributed over the axles as required by the statute. It is further my opinion that § 46.2-1143 does not “exempt” any truck from being weighed and does not create a “presumption” of weight beyond the evidentiary standard to be applied in a court of law.

With kindest regards, I am

Very truly yours,

A handwritten signature in blue ink that reads "Ken C. II". The signature is stylized, with the first name "Ken" and the last name "C." followed by a Roman numeral "II".

Kenneth T. Cuccinelli, II  
Attorney General