



Final Regulation Agency Background Document

Agency name	Department of Mines, Minerals and Energy
Virginia Administrative Code (VAC) citation	4 VAC25-31
Regulation title	Reclamation Regulations for Mineral Mining
Action title	Amendments to reclamation regulations for mineral mining resulting from periodic review
Date this document prepared	May 20, 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

As a result of periodic review, the Department of Mines, Minerals and Energy (DMME) is amending 4VAC25-31, Reclamation Regulations for Mineral Mining. The amendments will facilitate the use of electronic permitting and forms and clarify reclamation and post-mining land use requirements. Miscellaneous obsolete items, such as addresses that have changed, will be updated. The agency will also expand the types of financial instruments that can be used for performance bonds. These amendments are needed to keep the regulations current, accurate, and clear.

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 May 21, 2013, DMME adopted the final regulation Reclamation Regulations for Mineral Mining.

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.

DMME is authorized to promulgate regulations necessary to the performance of its duties under §45.1-161.3 of the Code of Virginia. §45.1-180.3 gives the Director of DMME specific authority over the reclamation of mineral mines. This authority is mandatory.

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 the amended regulation is to ensure that public health and safety of citizens is maintained by ensuring mineral mining reclamation standards are updated to reflect current industry best practices.

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 proposed action will amend sections of an existing regulation. The agency's commitment to offering electronic services to customers will require certain sections to be amended to facilitate the use of electronic forms. Other sections will be reorganized or reworded to make them clearer. Obsolete information, such as agency addresses that have changed, will be corrected. Sections dealing with reclamation standards and post-mining land use will be clarified and strengthened to assure adequate protection of the environment. The agency is also allowing an additional type of financial instrument to be used as bond.

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.

- 1.) The regulatory changes will provide additional flexibility to the regulated businesses by increasing their ability to conduct business electronically and by allowing an additional acceptable form of bonding. There are no disadvantages to the public or the Commonwealth.
- 2.) DMME will benefit by improvements in its ability to conduct business electronically. DMME sees no disadvantages to the proposed regulatory changes.
- 3.) The regulatory changes coordinate definitions and requirements of other state agencies (DCR, DEQ) to make compliance easier during mining and after mining.

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.

Section number	Requirement at proposed stage	What has changed	Rationale for change
10	Asphalt included in definition of “inert waste.”	Asphalt has been stricken from definition.	Asphalt should not be considered inert waste for the purposes of section 405.
100 and 110	No explicit statement that paper filings are acceptable.	Paper filings shall be considered acceptable.	To maximize flexibility for small mineral mine operators in the Commonwealth.
150	Delineated wetlands within the permit boundary shall be shown.	Wetlands that have been previously delineated shall be shown within the permit boundary.	Language is amended to clarify that only previously identified wetlands are to be shown on the map.
150	No requirement for riparian buffers.	Riparian buffers that have been previously delineated shall be shown within the permit boundary.	Language was added in tandem with striking language from Section 460 based on stakeholder input.
170	Public utilities within 1000 feet of the permitted are shall be notified of a permit application.	The requirement shall remain at the existing 500 feet.	The existing notification requirement will remain in place to address stakeholder concerns.
405	No specific approval for using on-site generated inert materials for fill.	On-site generated inert materials are approved for use as fill on the mining site provided.....	Language added to grant operators additional flexibility with respect to use of inert material.
460	A 50 foot riparian buffer is required along both sides of a perennial stream.	Language was stricken and language amended in Section 150.	See above.
505	Reporting impoundment failures	Any water impounding structure in the permitted area	Language added for clarity.
550	If crop yield data is unavailable, then other methods to determine....	Language stricken.	Section 550 is duplicative of Section 290 and is set to be deleted in another

			pending regulatory action.
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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.

Written comments were submitted by the Virginia Transportation Construction Alliance, Martin Marietta Materials, Virginia Vermiculite, LLC, Bennett Mineral Company, Frazier Quarry, Inc., Luck Stone, E Dillon & Company, Rockydale Quarries Corporation, and Vulcan Materials Company. Each of the above submitted a nearly identical letter to DMME regarding the proposed regulations. Additionally, Mark Williams of Luck Stone delivered an oral summary of his letter at the public hearing on December 4, 2012 in Charlottesville, VA. A summary of the letter and DMME’s response can be found below.

4 VAC 25-31-100 and 110 – The commenters expressed concern that adding the language “in a manner acceptable to the director” could result in DMME requiring that permit applications only be submitted electronically. The commenters indicated such a requirement would be burdensome on smaller mineral mine operators.

DMME Response – DMME has always sought to administer its regulatory requirements as efficiently and as equitably as possible. DMME will amend Section 100 and 110 by adding the following language: “Paper filings shall be considered acceptable.”

4 VAC 25-31-150 – The commenters expressed concern that the proposed language with respect to delineated wetlands could potentially cause confusion and could overlap with existing regulations from the Department of Environmental Quality, the Virginia Marine Resources Commission, and the Army Corps of Engineers.

DMME Response – DMME agrees that regulations should be drafted to avoid confusion and overlap with other agencies. Language regarding delineated wetlands shall be amended to read: “Wetlands that have been previously delineated shall be shown within the permit boundary.”

4 VAC 25-31-170 – The commenters expressed concern that requiring notification to public utilities within 1,000 feet of the permitted are would be unduly burdensome.

DMME Response – DMME agrees that regulations should not be unduly burdensome. To address the concerns of its stakeholders and because some ambiguity may exist in the relevant legislation, the existing 500 foot notification requirement will remain in place.

4 VAC 25-31-405 – The commenters expressed concern that the proposed language did not allow for suitable uses of on-site generated inert materials without requiring additional approvals.

DMME Response – DMME agrees that regulations should be drafted to allow for flexibility with respect to appropriate uses of inert material. As a result, DMME will amend Section 405 to add the following language: “On-site generated inert materials are approved for use as fill on the mining site provided that they are capped with a minimum of four feet of soil cover and seeding is established per the approved reclamation plan.”

4 VAC 25-31-460 – The commenters expressed concern that the requirement of a 50 foot riparian buffer to be maintained on all perennial streams would be overly burdensome. The commenters stated such a buffer would be duplicative of existing regulations and would have a detrimental economic impact.

DMME Response – DMME notes that mineral mine sites within the Chesapeake Bay watershed are already required to maintain a riparian buffer. To address the concerns of its stakeholders, the language in Section 460 requiring a buffer will be stricken and Section 150 will be amended to require maps to identify previously delineated riparian buffers.

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.

Current section number	New section number	Current requirement	Proposed change, rationale, and consequences
4 VAC 25-31-10	N/A	No definition of dam break inundation zone	Definition added to increase clarity.
10	N/A	Definition of fifty year storm	Definition modified to increase clarity.
10	N/A	Definition of inert waste	Definition added to increase clarity of waste disposal procedures.
10	N/A	Definition of intermittent stream	Definition modified to increase clarity.
10	N/A	Definition of one hundred year storm	Definition modified to increase clarity.
10	N/A	Definition of on-site generated mine waste	Definition added to increase clarity of waste disposal procedures.
10	N/A	Definition of perennial stream	Definition modified to increase clarity.
10	N/A	Definition of riparian buffer	Definition added to reflect industry best practices.
10	N/A	Definition of state waters	Definition added for consistency.
100	N/A	Mineral mining permits	Language added to facilitate annual permit renewals to be completed electronically or on paper.
110	N/A	Permit applications	Language modified to facilitate permit applications to be submitted electronically or on paper.
130	N/A	Mineral mining plans	The language is unchanged. Sections 1,2, and 3 were relocated to a more logical sequence.
130	N/A	Mining below the water table	Language relating to the creation of permanent lakes or ponds is modified to expand options available to operators.

150	N/A	Maps	Amended language reflects consistency with the Code of Virginia. Language also ensures maps reflect delineated wetlands and riparian buffers.
190	N/A	Availability of permits	Language is added requiring operators to keep a copy of the approved mineral mining plan on site, to reflect current practice.
260	N/A	Form of performance bond	Irrevocable letters of credit are added as an acceptable form of performance bond to allow operators more flexibility in securing the required reclamation bond.
290	N/A	Intensive agricultural use	Language is modified to add flexibility in the determination of bond release to the operator.
330	N/A	Protected structures and sensitive features	Language is added related to protected structures for consistency.
360	N/A	Operation and reclamation	Language related to lakes and ponds is modified to retain consistency with Section 130.
380	N/A	Treatment of acid material	Language is modified to improve clarity and intent of regulation.
405	405	Disposal of Waste	Section added to replace existing Communication Memorandum which already exists under current policy. Language is also added to grant operators flexibility in using on-site generated inert material.
420	N/A	Screening	Language is modified to increase options for screening by the operator. Topsoil depth increased to improve conditions for reclamation vegetation.
490	N/A	Water quality	Language is added allowing the Director flexibility and reference is made to existing State Water Control Board standards.
500	N/A	Water impoundments	This regulation was modified in order to bring DMM requirements in line with current DCR requirements for large impoundments. This will allow a seamless transition from DMM oversight to DCR oversight at the end of mining.
505	505	Reporting impoundment failures	Language is added to require operators to notify DMM immediately if an impoundment suffers a partial or complete failure. This is necessary to protect public

			safety.
510	N/A	Alternative stabilization methods	Language is added to allow operators additional flexibility with respect to methods of stabilization.
530	N/A	Revegetation process	Language is modified to allow more flexibility by allowing mulch requirements to be approved in the operator's reclamation plan.
540	N/A	Trees and shrubs	Language is stricken to reflect current industry standards regarding tree and shrub planting.
550	N/A	Intensive agricultural use	Language is modified to add flexibility in the determination of bond release to the operator.