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Fast Track Proposed Regulation Agency Background Document

Agency name	Department of Mines, Minerals, and Energy
Virginia Administrative Code (VAC) citation	4 VAC 25-130
Regulation title	Coal Surface Mining Reclamation Regulations
Action title	Action to amend sections 4 VAC 25-130-801.17 and 801.18
Document preparation date	January 6, 2004

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. Do **not** state each provision or amendment or restate the purpose and intent of the regulation.*

The Coal Surface Mining Reclamation Regulations establish the general rules and technical requirements through which the Department of Mines, Minerals and Energy, Division of Mined Land Reclamation implements the Virginia Coal Surface Mining Control and Reclamation Act of 1979 (Chapter 19, Title 45.1, Code of Virginia).

The proposed amendments to this regulation will conform the performance bond release procedures that are applied to bonds furnished pursuant to the Coal Surface Mining Reclamation (Pool Bond) Fund, Virginia's "alternative bonding system," with bond release procedures used for other performance bonds. This will allow use of a phased bond release for all permitted coal mine sites in Virginia. It will also clarify language regarding minimum bond amounts set for permits.

Legal basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

The DMME derives its authority to promulgate this regulation from Virginia Code sections 45.1-161.3, 45.1-230, and 45.1-241. C.

Section 45.1-161.3 gives DMME the authority to promulgate regulations necessary or incidental to the performance of duties or execution of powers conferred under Title 45.1 and other relevant chapters, which regulations shall be promulgated by the Department, the Chief, or the Director, as appropriate, in accordance with the provisions of Article 2 of the Administrative Process Act.

Section 45.1-230 states that the DMME Director has the authority and the duty to publish and promulgate such regulations as may be necessary to carry out the purposes and provisions of the Virginia Coal Surface Mine Reclamation Act.

Section 45.1-241.C states that the DMME Director is authorized to develop and promulgate an alternative bonding system that will achieve the objectives and purposes of the bonding program established under Section 45.1-241 of the Code of Virginia.

Title 45.1 of the Code of Virginia may be viewed from <http://leg1.state.va.us>.

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 the regulation 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.

This proposed amendment to the Coal Surface Mining Reclamation Regulations is necessary because it updates language in the regulation that will help DMME customers operate and reclaim mine sites more effectively. Specifically, it removes bonding release language from 4 VAC 25-130-801.17 that can also be found in 4 VAC 25-130-840, without removing the essential performance requirements. Second, it clarifies requirements regarding minimum bond amounts.

There is no federal counterpart to these amendments. Because these requirements are designed to govern mine land reclamation and the bonding process, it is important to ensure that state requirements are kept current with today's standards.

The goals of the regulation sections being amended are to ensure that adequate funds are available for reclamation of coal mine sites. Timely reclamation of mined lands ensures the protection of the public health, safety and welfare.

The goals of the amendments to this regulation are to remove the unique performance bond release procedures that have been applied only to bonds furnished pursuant to the Virginia alternative bonding system. This is being done because it will make bond release procedures for bonds issued under the alternative bonding system consistent with procedures for cost bonds. All coal mine sites that are being reclaimed will have their bonds released in phases as the sites are being reclaimed; making the bond capacity available to the operator for other sites. This amendment will also clarify that the minimum bond amount established for the total permit area by the Code of Virginia, sections 45.1-241 and 45.1-270.3 B and in 4 VAC 25-130-801.12 (b) will be retained until Phase III of the final bond release.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

DMME is using the fast track process to amend this regulation because of extensive work that has already been completed by a regulatory work group during the development of the amendment. The general acknowledgement is that the amendment helps to return bond capacity to the operators, thus making the bonds available for other sites.

This amendment will delete the unique performance bond release procedures that have been applied only to bonds furnished pursuant to the Virginia alternative bonding system. The action streamlines performance bonding used in the reclamation process.

Amendment approval by the Federal Office of Surface Mining is being sought concurrently with state submittal. Since the federal office has informally reviewed these proposed changes, approval is expected within 60-90 days.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

Prior to Surface Mine Control and Reclamation Act of 1977, SMCRA, mined land was often abandoned without returning mined property to a condition where it may be of productive use.

SMCRA set forth requirements to prevent such abandonment and to reclaim mined lands. Bonding of mine sites is essential in that it ensures that there will be money available to reclaim mined land if the mine operator does not complete the reclamation.

The language was developed through a series of regulatory and permit work group meetings. Recommendations were also received from the Coal Surface Mining Reclamation Fund Advisory Board.

Amendments to sections 4 VAC 25-130-801.17 and 801.18 of the regulation, apply to the bond release application and the criteria for release of the bond, respectively. The changes remove the duplicate language listing the bond release criteria that are found in 4 VAC 25-130-800.40, and instead just reference 4 VAC 25-130-800.40.

The amendment allows a phased release of the bonds on land in the pool bond program. Currently a site participating in the pool is not eligible for a phased reduction until the land is reclaimed, post mining land use has been implemented, and two years have passed. At this point, the bond can be reduced to the minimum. Under this proposed change, the site, like a cost bond site, would be eligible to receive a 60% reduction when backfilling and regrading is achieved.

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.*

An issue that may arise from the proposed amendment is one that is related to the amount of a permittee's bond that will be retained or released for each increment of reclamation. Under the proposal, a portion of the bond will be released when backfilling and regrading are complete (Phase I). Additional bond will be released after revegetation is established on the land (Phase II). And lastly, the minimum bond will be retained until the reclamation has been completed to satisfaction (Phase III). This approach ensures that sufficient funds remain available for reclamation, but excess funds are not held.

Phasing the release of bonds encourages mine operators to achieve early stages of reclamation more quickly. Reclaiming mined lands in a more timely manner is advantageous to public, private, and state entities because it more quickly reduces or eliminates environmental, health, and safety impacts associated with hazardous conditions that stem from mine high walls, mine waste material stockpiles, runoff from rain and dust, and other related conditions. In addition, reclaimed mined land can provide economic development potential if it can be used for commercial or industrial purposes. By releasing bond capacity earlier in the reclamation process, the bond capacity becomes available for use on additional mined lands. This will reduce costs to mine operators while retaining adequate bond coverage on mined lands. There are no disadvantages to the public or the Commonwealth associated with these amendments.

Financial impact

Please identify the anticipated financial impact of the proposed regulation and at a minimum provide the following information:

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>The projected cost to the state to implement and enforce the proposed regulation will be minimal. (a) Fund Source: 1/2 General Fund- 1/2 Federal Funds; Fund Detail: 1000 (b) There will be a one time cost of \$400.00 that includes the number of man-hours (24) needed to develop language for the proposed rule.</p>
<p>Projected cost of the regulation on localities</p>	<p>There will be no cost to localities as a result of the proposed regulation.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>Parties affected by this proposed regulation include those individuals, businesses, or other parties that apply for and receive a DMLR mining permit and enter the pool bond fund.</p>
<p>Agency’s best estimate of the number of such entities that will be affected</p>	<p>According to DMLR records, there are 276 permits issued that are participating in the pool bond fund. The 276 permits represent 76 individuals, businesses or other entities that hold DMLR mining permits in the pool bond fund.</p>
<p>Projected cost of the regulation for affected individuals, businesses, or other entities</p>	<p>There will no cost of the proposed regulation to affected individuals, businesses or other entities. This regulation will make the release of bonds to those individuals, businesses or other entities that participate in the pool bond fund quicker once the reclamation obligations have been met. This will result in savings* to the affected entities by freeing up bond capacity to be used on new sites.</p>

*There are 176 permitted sites participating in the pool bond fund. There is approximately \$105,000,000 posted on these sites. With this regulation change, this would mean that as soon as these sites reach a point in the reclamation phase of rough backfilling, up to 60% (63,000,000 of the 105,000,000) of the bond could be released back to the operator. Under the current pool bond regulations these permits would not be eligible for any bond reduction until all reclamation activities have been completed and two years have passed. This means that operators can receive their bond back in a shorter period of time under the proposed regulation.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

No viable alternatives to the amendment other than no action were considered during the workgroup and the department’s review. This amendment is the least burdensome or intrusive and meets the essential purpose of the regulation because it requires only the minimally necessary bond be retained on mine sites. This helps mine operators by making bond capacity available for additional lands to be mined.

Impact on family

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

The regulation governs reclamation procedures as they apply to coal mine sites. The sections being amended address performance bond release procedures. Reclaimed mine sites provide an economic benefit to the community. Reclaimed mine sites also contribute to a safer environment. A safer environment reduces accidents that may result in injury to the public, reduced family income, and increased family stress. Ensuring that mine sites are reclaimed has a generally positive effect on families in communities around coal mines through protection of the public health, safety and welfare from adverse effects of mining operations.

Detail of changes

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

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale

<p>4 VAC 25-130-801.17</p>	<p>N/A</p>	<p>4 VAC 25-130-801.17. Bond release application.</p> <p>Current requirements set forth criteria for the bond release application process. The application process requires full bond coverage through the entire bonding period. In addition, the section sets out the bond release application procedure.</p>	<p>4 VAC 25-130-801.17. Bond release application.</p> <p>The proposed changes incorporate a three phased bond release approach into the application process. This three-phase approach is the same as is used for cost bonds in section 4 VAC 25-130-801.18. The changes also set procedural requirements for bond release by referencing section 4 VAC 25-130-800.40. The amendment removes the reference to bond amounts as they are set forth in 4 VAC 25-130-801.12 (b) and adds a reference to the applicable sections of the Code of Virginia.</p>
<p>4 VAC 25-130-801.18</p>	<p>N/A</p>	<p>4 VAC 25-130-801.18. Criteria for release of bond.</p> <p>Section 4 VAC 25-130-801.18 sets forth criteria for full bond release. The requirements are similar to the application criteria in the previous section. The difference is that they apply to bond release as opposed to the application process.</p>	<p>4 VAC 25-130-801.18. Criteria for release of bond.</p> <p>The proposed amendments incorporate changes that provide for phased bond coverage through the bond period. The change to a phased release will allow for partial bond release as the reclamation progresses through each phase. The amended section also incorporates reference to the Code of Virginia sections 45.1-241 and 45.1-270.3 as well as administrative code section 4 VAC 25-130-800.40 as opposed to duplicating the same language in this section.</p>