



Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) 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	Amend requirements for coal mine permit boundary markers and blasting near residences and occupied buildings
Document preparation date	March 4, 2005

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Preamble

The APA (Code of Virginia § 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.

- 1) Please explain why this is an “emergency situation” as described above.
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

This regulation change is being made to meet the requirements of HB 2573, enacted as emergency legislation in Chapter 3 of the 2005 Acts of Assembly. This directs DMME to promulgate regulations within 280 days of the enactment of the Act that:

- require coal mine permit boundary markers located on steep slopes above private dwellings or occupied buildings to be made or marked with fluorescent or reflective material, and

- require persons conducting blasting operations on coal mines occurring within 1,000 feet of a private dwelling or occupied building to conduct seismic monitoring of the blasting.

This regulation amendment was recommended in the accident investigation report following an August 20, 2004 accident in Wise County that resulted in fatal injuries to a 3-year old boy.

Legal basis

Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The Department of Mines, Minerals and Energy (DMME) has authority to promulgate this regulation under authority found in § 45.1-161.3, Powers of the Department, § 45.1-230, Authority and duties of Director, and § 45.1-242, Performance standards.

- Section 45.1-161.3 empowers DMME, with the approval of the Director, to promulgate regulations necessary or incidental to the performance of duties or execution of powers under Title 45.1 of the Code of Virginia.
- Section 45.1-230 of the Code of Virginia empowers the DMME Director to promulgate regulations as may be necessary to carry out the provisions of the Virginia Coal Surface Mining Control and Reclamation Act, chapter 19 of Title 45.1 of the Code.
- Section 45.1-242 of the Code of Virginia directs the DMME Director to, by regulation, establish performance standards applicable to all surface mining and reclamation operations. Establishment of these performance standards by regulation is mandatory.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

This first amendment to the regulation will require coal mine operators to install and maintain permanent permit boundary markers in areas located above residences or occupied buildings that are made out of or marked with fluorescent or reflective paint. This requirement is being put into place to ensure that persons conducting mining operations can clearly locate the boundaries of the permitted site during the night or day when they are working on slopes above residences or occupied buildings. The goal of this change is to ensure that no danger is posed from material being released off of the permitted mine site where it can move down hill into the residences or occupied buildings.

The second amendment to the regulation will require operators of coal mines to monitor all blasts within 1,000 feet of an residence or occupied building with a seismograph. Under current regulations, operators may use a formula, called the scaled distance equation, to determine the allowable charge weight of explosives to be detonated in any 8-millisecond period and not be required to monitor the air blast or ground vibration with a seismograph. This amendment is being put in place to help respond to the large number of complaints from the public about the effects of blasting on coal mines. Monitoring every blast will enable the Department of Mines, Minerals and Energy to better determine whether blasts on coal mines exceed the maximum air blast and ground vibration limits in the regulation.

Substance

Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons why the regulation is essential to protect the health, safety, or welfare of Virginians. Delineate any potential issues that may need to be addressed as a permanent final regulation is developed.

The Department of Mines, Minerals and Energy is proposing two amendments to two sections of the 4 VAC 25-130 Coal Surface Mining Reclamation Regulations. The changes are described in the following table.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
4 VAC 25-130-816.11	N/A	Signs and markers on permitted coal mines must be made of durable material and be maintained during the conduct of all activities to which they pertain.	<p>In addition to being made of durable material and properly maintained, permit boundary markers on areas that are located on steep slopes above private dwellings or other occupied buildings will also be required to be made of or marked with fluorescent or reflective paint or material.</p> <p>This change is essential to protect the safety and welfare of persons living or in occupied buildings near coal mines. Workers on coal mines in areas located on steep slopes above residences or occupied buildings must have clear knowledge of the mine’s boundary location. If operations move beyond these boundaries, there is increased risk of releasing material off of the site. This material may travel down the steep slopes and into occupied structures, as happened in a fatal coal mine accident on August 20, 2004 in Wise County.</p>
4 VAC 25-130-816.64	N/A	When blasting with explosives on coal mines, the coal mine operator may use a formula, called the scaled distance equation, to determine the allowable charge weight of explosives to be detonated in any 8-millisecond period and not be required to monitor blast with a seismograph.	<p>Seismic monitoring will be required whenever blasting operations on a surface coal mine are conducted within 1,000 feet of a private dwelling or occupied building. This change will eliminate the exception for seismic monitoring when the scaled distance equation is used for blasting near occupied buildings.</p> <p>This amendment is essential to protect the safety and welfare of persons living near blasting operations on coal mines. Persons and property are at risk from</p>

			<p>blasting due to air blast, ground vibration, or fly rock from improper blasting. Blasting is the most common source of complaints about coal mining operations. Monitoring every blast close to occupied buildings will enable the Department of Mines, Minerals and Energy to better determine whether blasts on coal mines exceed the maximum air blast and ground vibration requirements in the regulation.</p>
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There are a number of potential issues that must be addressed as a permanent final regulation is developed.

- This emergency amendment is addressing Part 816 of the Coal Surface Mining Reclamation Regulations. This part of the regulation sets out standards for surface coal mines. There are similar standards for underground coal mining operations in Part 817 of the regulations. The Department of Mines, Minerals and Energy (DMME) intends to address whether these requirements should also be placed in Part 817 of the regulations.
- Other sections of the Coal Surface Mining Reclamation Regulations may also need to be amended to permanently implement the requirements to monitor all blasting within 1,000 feet of a residence or occupied building. For example, regulations 4 VAC 25-130-816.67 and 817.67 address use of explosives and control of adverse effects of blasting. DMME will address whether other related sections should be amended to supplement or clarify these emergency changes.
- Chapter 3 of the 2005 Virginia Acts of Assembly (HB 2573) also increased the civil penalties for violations of the Virginia Coal Surface Mining Control and Reclamation Act that result in a personal injury or fatality. DMME intends to address whether amendments are needed to Part 845, Civil Penalties, of the Coal Surface Mining Reclamation Regulations to implement the increased civil penalty.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

The Department of Mines, Minerals and Energy (DMME) is directed to promulgate these regulatory amendments on an emergency bases in accordance with the third enactment clause of Chapter 3 of the 2005 Virginia Acts of Assembly (HB 2573). DMME has no alternative to this action that would meet this mandate.

Family impact

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

These regulatory changes are designed to help ensure that there will be no damage or injury to persons who live or are in occupied buildings near active coal mines. The amendments are being promulgated as part of recommendations from a Department of Mines, Minerals and Energy report of a coal mining

accident in Wise County that resulted in the death of a three-year old child. The amendments will increase the safety and welfare of families living in areas near coal mines.