

**COMMONWEALTH OF VIRGINIA**  
**DEPARTMENT OF MINES, MINERALS & ENERGY**  
**DIVISION OF MINED LAND RECLAMATION**  
**STATE RECLAMATION PLAN**



**DIVISION OF MINED LAND RECLAMATION**

**P.O. DRAWER 900**

**BIG STONE GAP, VA 24219**

**PHONE: 276-523-8100**

Revised 09/99

## TABLE OF CONTENTS

	<u>PAGE</u>
Introduction.....	3
Governor’s letter of designation [884.13 (a)].....	5
Legal Opinion [884.13(b)].....	6
Purpose of the State Reclamation Program [884.13 (c)(1)].....	7
Ranking and Selection [884.13 (c)(2)].....	8
Coordination With Other Programs [884.13 (c)(3)].....	23
Land Acquisition, Management and Disposal [884.13 (c)(4)].....	25
Reclamation on Private Land [884.13 (c)(5)].....	35
Rights of Entry [884.13 (c)(6)].....	40
Public Participation Policies [884.13 (c)(7)].....	43
Organization [884.13 (d)(1)].....	45
Staffing Policies [884.13 (d)(2)].....	49
Purchasing and Procurement [884.13 (d)(3)].....	50
Accounting System [884.13 (d)(4)].....	51
Location of Known or Suspected Eligible Land and Water [884.13 (3) (1)].....	54
Description of Problems Occurring on Lands and Waters [884.13 (e)(2)].....	55
Reclamation Proposals [884.13 (e)(3)].....	56
Economic Base [884.13 (f)(1)].....	59
Aesthetic, Historical or Cultural, and Recreation Values [884.13 (f)(2)].....	62
Endangered and Threatened Plant, Fish, Wildlife and Habitat [884.13 (f)(3)].....	65

## **INTRODUCTION**

On August 3, 1977, Congress enacted the Surface Mining Control and Reclamation Act (SMCRA), Public Law 95-87. Under Title IV of this Act, each state, having an approved surface coal mining regulatory program, is eligible to participate in a cooperative Federal-State program to reclaim abandoned mine land (AML). Following the Department of the Interior, Office of Surface Mining's (OSM) approval of a State surface coal mining regulatory program, the State may submit a plan, in accordance with regulations set forth in 30 CFR 884.13, to conduct an AML Reclamation Program. This document fulfills the requirements of 30 CFR 884.13, "Content of Proposed State Reclamation Plan," for the Commonwealth of Virginia, Department of Mines, Mineral, and Energy (DMME)/Division of Mined Land Reclamation (DMLR).

This plan is based upon the best available information regarding the criteria set forth in 30 CFR 884.13. The Virginia Plan was originally approved December 15, 1981. The plan was amended February 03, 1987, to include the following revisions: organization, project selection, reclamation on private land, rights of entry, public participation and establishment of State emergency reclamation program. These amendments were approved effective November 13, 1987.

This second amendment to the State Plan includes: public water supplies,

interim program sites, prioritization, AML eligibility for mine fires, refuse sites, acid mine drainage, re-mining, water project eligibility extended to primacy and a general streamlining of the entire document to more closely parallel the requirements for "Contents of proposed state reclamation plan" 30 CFR 884.13.

The primary purpose of the second amendment to the state plan is to incorporate the SMCRA 1990 amendments and the Energy Policy Act of 1992. Further amendments to the state plan may occur as necessary to reflect future law and regulatory changes affecting the Virginia AML Program.

The document is available for public review upon request to the administering State agency, the Virginia Department of Mines, Minerals and Energy/Division of Mined Land Reclamation, P. O. Drawer 900, Big Stone Gap, VA 24219.

**GOVERNOR'S LETTER OF DESIGNATION 884.13 (a)**



COMMONWEALTH of VIRGINIA

Office of the Governor

Richmond 23219

April 4, 1980

John N. Dalton  
Governor

Mr. Walter N. Heine, Director  
Office of Surface Mining  
United States Department of the Interior  
Washington, D. C. 20240

Dear Mr. Heine:

Pursuant to P.L. 95-87, I hereby designate the Virginia Department of Conservation and Economic Development as the State agency authorized to implement and administer the Abandoned Mine Reclamation Program and to receive, administer, and disburse Federal grants, pursuant to Title IV of the "Surface Mining and Reclamation Act of 1977".

Mr. Danny R. Brown, Commissioner of the Division of Mined Land Reclamation of the Department of Conservation and Economic Development, will be Virginia's primary point of contact.

With all good wishes, I am

Very truly yours,

*John N. Dalton*

John N. Dalton

JND/jyw

cc: Maurice B. Rowe  
Fred W. Walker  
Danny R. Brown

## ARTICLE 1.

*Department of Mines, Minerals and Energy.*

§ 45.1-1: Repealed by Acts 1984, c. 590, effective January 1, 1985.

**Editor's note.** — Acts 1984, c. 590 divided Chapter 1 of Title 45.1 into Articles 1 and 2.

§ 45.1-1.1. **Creation of Department; appointment of Director.** — There is hereby created a Department of Mines, Minerals and Energy. The Department shall be headed by a Director who shall be appointed by the Governor, subject to confirmation by the General Assembly, to serve at his pleasure for a term coincident with his own.

Whenever in the Code of Virginia reference is made to a division, department or agency hereinafter transferred to this Department, it shall mean the Department of Mines, Minerals and Energy. (1984, c. 590.)

**Editor's note.** — At its 1966 session the General Assembly, by Acts 1966, c. 594, repealed Title 45 of the Code and enacted in its place a new Title 45.1, comprising Chapters 1 (§ 45.1-1.1 et seq.) to 14 (§ 45.1-158 et seq.). Former Chapter 15 (§§ 45.1-162 through 45.1-179), also enacted at the 1966 session of the General Assembly, was codified in this title by the Virginia Code Commission.

Chapter 717 of the Acts of 1966 provides: "Whenever, during the regular session of the General Assembly of Virginia of nineteen hundred sixty-six there shall have been enacted any statute purporting to revise, rearrange, amend and recodify any title of the Code of Virginia, such statute shall be deemed to have been enacted prior in time to any other statute enacted at such session adding to, repealing or amending and reenacting any portion of such title; and every such other statute shall be deemed to have so added to, repealed or amended and reenacted, as the case may be, such title as so revised, rearranged, amended and recodified; provided, however, that effect shall be given to any such other, or subsequent, statute only to the extent of any apparent changes in the law as it existed prior to such session."

Acts 1984, c. 590, which added Article 1 of Chapter 1 and Chapters 25 and 26 and enacted, amended, and repealed other sections of Title 45.1, became effective January 1, 1985.

Acts 1984, c. 590, cl. 3 provides: "That no provision of this act shall be construed as authorizing or establishing a program for the permitting of uranium mining."

Acts 1984, c. 590, cl. 5 provides: "That the Department of Mines, Minerals and Energy shall be deemed the successor in interest to the Division of Mined Land Reclamation and the Division of Mineral Resources in the Department of Conservation and Economic Development, the Division of Mines in the Department of Labor and Industry, and the State Energy Office in the Office of Emergency Services to the extent that this act transfers powers and duties. All rightful title to and interest in any real or tangible personal property or records vested in those existing agencies shall be transferred to and taken as standing in the name of the Department of Mines, Minerals and Energy to the extent that this act transfers powers and duties."

Acts 1984, c. 590, cl. 6 provides: "That regulations promulgated by the Board of Conservation and Economic Development, the Commissioner of Labor and Industry, and the Chief of the Division of Mines of the Department of Labor and Industry under the authority transferred to the Department of Mines, Minerals and Energy shall remain in force and effect until any such regulation is amended, modified, or repealed by the Department of Mines, Minerals and Energy."

§ 45.1-1.2. **Definitions.** — As used in this title, unless the context clearly requires otherwise:

"Chief" means the Chief of the Division of Mines of the Department of

**LEGAL OPINION 884.13 (b)**





# COMMONWEALTH of VIRGINIA

Office of the Attorney General  
Richmond 23219

James S. Gilmore, III  
Attorney General

January 29, 1996

DIVISION OF MINED LAND RECLAMATION	
FEB 1 1996	
<input checked="" type="checkbox"/>	DIVISION DIRECTOR
<input type="checkbox"/>	Rec. S.:. Mgr. (RES)
<input type="checkbox"/>	ENFORCE MGR. 900 East Main Street
<input type="checkbox"/>	CHIEF ENGINEER RICHMOND, Virginia 23219
<input type="checkbox"/>	AML MGR. 804 804 - 786 - 2071
<input type="checkbox"/>	WATER QTY. MGR. 804 - 371 - 8946 TDD
<input type="checkbox"/>	GEOL. MGR.
<input type="checkbox"/>	PERMIT SUPV.
<input type="checkbox"/>	E. ENG. CONS.
<input type="checkbox"/>	CAS. MGR. FILE
<input type="checkbox"/>	Sp. Pro. Mgr. RETURN
<input type="checkbox"/>	ASST. AG HANDLE
<input type="checkbox"/>	FYI
<input checked="" type="checkbox"/>	DMME DEP. DIRECTOR (RS)

Mr. Danny R. Brown  
Division Director  
Department of Mines, Minerals  
and Energy  
P. O. Drawer 900  
U.S. Route 23 South  
Big Stone Gap, VA 24219

Dear Mr. Brown:

In response to your request for an opinion under 30 C.F.R. § 884.13(b), this is to inform you that under the provisions of § 45.1-260(B), Code of Virginia, ("The Director may from time to time develop and submit to the Secretary amendments and revisions to the [State] Plan consistent with this article"), you have authority to amend the State's AML Reclamation Plan. The proposed amendments to the State Plan appear to be authorized by this Code Section.

Very truly yours,

Richard B. Zorn  
Senior Assistant Attorney General  
Chief, Commerce and Trade Section

Commonwealth of Virginia



MARSHALL COLEMAN  
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL  
SUPREME COURT BUILDING  
1101 EAST BROAD STREET  
RICHMOND, VIRGINIA 23219  
804.786.2071

PLEASE REPLY TO:

ENVIRONMENTAL SECTION  
11 S. 12TH ST., SUITE 113  
RICHMOND, VA. 23219  
(804) 786-1348

February 22, 1980

Fred W. Walker, Director  
Department of Conservation  
& Economic Development  
1100 Old State Office Building  
Richmond, Virginia 23219

Dear Mr. Walker:

As you have requested; I have examined the Virginia Coal Surface Mining Control and Reclamation Act of 1979 (Acts of Assembly, 1979, Chapter 290; Title 45.1, Chapter 19, Sections 45.1-226 et seq., of the Code of Virginia, (1950) as amended) hereinafter referred to as the State Act, to determine whether the Commonwealth of Virginia has adequate legal statutory authority to implement, administer and enforce a program for the regulation of surface coal mining and reclamation operations and a program for the reclamation of abandoned mined land, in accordance with the Federal Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95-87, 91 U.S. Stat. 445), hereinafter referred to as the Federal Act.

I have reviewed the Virginia Coal Surface Mining and Reclamation Act of 1977, and my findings, as the Assistant Attorney General of the Commonwealth assigned to provide legal counsel to the Virginia Board and Department of Conservation and Economic Development, are as follows:

1. The State Act authorizes the Board of Conservation and Economic Development to promulgate regulations for the control of surface coal mining and reclamation operations and for the reclamation of abandoned mine land, to carry out

Fred W. Walker, Director  
February 22, 1980  
Page 2

the purposes and provisions of Chapter 19, consistent with regulations promulgated by the Secretary of the Interior pursuant to the Federal Act. This authority is found in Sections 45.1-230 and 45.1-260 of the State Act.

2. The State Act provides sanctions for violations of statutory requirements, regulations and conditions of permits concerning surface coal mining and reclamation operations. The Director of the Department of Conservation and Economic Development is authorized, pursuant to Section 45.1-230B to enforce the provisions of the State Act. The Director, or his authorized agents, is authorized to impose administrative sanctions such as withholding, suspending or revoking permits, issuing notices and violation and cease-and-desist orders, forfeiting bonds, and assessing civil penalties.

The Director, or his authorized agents, is further authorized to seek judicial sanctions of fines, imprisonment and injunctive relief. These administrative and judicial sanctions meet the requirements of the Federal Act and are found in Sections 45.1-238 (denial of permits); 45.1-245 (notices of violation, cease-and-desist orders, suspension and revocation of permits, injunctive relief); 45.1-246 (civil penalties, fines and imprisonment); and 45.1-247 (forfeiture of bonds).

3. The State Act authorizes the Director, or his authorized agents, to administer a permit system, which meets the requirements of the Federal Act. The authority for this permit system is found in Sections 46.1-234, 45.1-235, 45.1-236, 45.1-237, 45.1-238, 45.1-239 and 45.1-240 of the State Act.

4. The State Act authorizes the Director, or his authorized agents, to administer and enforce regulations applicable to coal exploration operations, in accordance with the Federal Act. The authority to regulate coal exploration operations is found in Section 45.1-233 of the State Act.

5. The State Act authorizes the Board to promulgate regulations applicable to persons extracting coal incidental to government financed construction. The authority for such regulations is found in Section 45.1-253 of the State Act.

6. The State Act authorizes the Director or his authorized agents to enter, inspect and monitor all coal surface mining and reclamation operations. This authority

Fred W. Walker, Director  
February 22, 1980  
Page 3

is found in Section 45.1-244 of the State Act. The Director would be authorized to enter, inspect and monitor coal exploration operations pursuant to regulations adopted by the Board under Section 45.1-233 of the State Act.

7. The State Act authorizes the Director or his authorized agents to implement, administer and enforce a system of performance bonds and liability insurance in accordance with the Federal Act. This authority is found in Section 45.1-241 of the State Act.

8. The State Act authorizes the Board to promulgate regulations setting forth performance standards and other requirements meeting the provisions of Section 515 and 516 of the Federal Act. This authority is found in Sections 45.1-242 and 45.1-243 of the State Act. The Director or his authorized agents is authorized to enforce these regulations, and the requirements of Sections 45.1-242 and 45.1-243, as stated in paragraph number 2 of this letter.

9. The State Act authorizes the Board to designate areas as unsuitable for surface coal mining in accordance with Section 522 of the Federal Act. This authority is found in Section 45.1-252 of the State Act.

10. The State Act provides for public participation in the development, revision and enforcement of State regulations and the State program, in accordance with the requirements of the Federal Act. Provisions for public participation are found in Sections 45.1-230A, 45.1-235, 45.1-237, 45.1-239, 45.1-244E, 45.1-245C and D, 45.1-246B, 45.1-247, 45.1-249, 45.1-251, 45.1-252, and 45.1-263F.

11. The State Act prohibits direct or indirect financial conflicts of interest in coal mining operations by employees of the Department in accordance with the requirements of the Federal Act. The Board is authorized to promulgate regulations by which such prohibition will be monitored and enforced. The prohibition and authorization for regulations is found in Section 45.1-231 of the State Act, subject to the provisions of Section 45.1-232.

12. The State Act authorizes the Board to promulgate regulations requiring the training, examination and certification of persons engaging in or directly responsible for blasting and the use of explosives. This authority is found in Section 45.1-256.

Fred W. Walker, Director  
February 22, 1980  
Page 4

13. The State Act provides for small operator assistance in accordance with the Federal Act. This provision is found in Section 45.1-235C of the State Act.

14. The State Act provides for the protection of State employees of the Department in accordance with the Federal Act. This provision is found at Section 45.1-257 of the Federal Act.

15. The State Act provides for administrative and judicial review of State program actions, in accordance with the Federal Act. Provisions for administrative and judicial review are found in Sections 45.1-249, 45.1-250 and 45.1-251 and in the applicable provisions of the Virginia Administrative Process Act (Chapter 1.1:1, Title 9, of the Code of Virginia) and the Rules of the Supreme Court of Virginia.

16. The State Act authorizes the Director or his authorized agents to coordinate and cooperate with the Office of Surface Mining, consistent with Federal regulations. Such authority is implied in authority for the Director, or his authorized agents, to enter into contracts for federal funds, under Section 45.1-230B4 of the State Act, and in the general authority of the Board to promulgate regulations consistent with the Secretary's regulations.

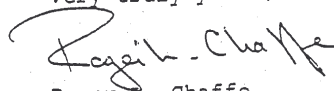
17. The State Act provides for a State Reclamation Program in accordance with Title IV of the Federal Act. The Board is authorized to develop and submit a State Reclamation Plan. The Director, or his authorized representatives, is authorized to prepare and submit annual projects, to administer the Plan and annual projects, and to receive and administer grants. An Abandoned Mine Reclamation Fund is created in the State Treasurer's Office. The provisions for a State Reclamation Program are found in Sections 45.1-260 through 45.1-270 of the State Act.

Based on the foregoing findings and my review of the State and Federal Act, it is my opinion, as legal counsel to the Board and Department of Conservation and Economic Development as aforesaid, that the State Act provides for the regulation of coal exploration and coal mining and reclamation operations, and for the reclamation of abandoned mined land in accordance with the applicable requirements of the Federal Act. A section-by-section comparison of the sections of the Federal Act with the corresponding sections of the State Act, with an explanation of any differences, and their effect, is attached hereto and made a part hereof.

Fred W. Walker, Director  
February 22, 1980  
Page 5

With kindest regards, I remain

Very truly yours,



Roger L. Chaffe  
Assistant Attorney General

4:43/170

Attachments

## **PURPOSES OF THE STATE RECLAMATION PROGRAM 884.13 (c) (1)**

Virginia's AML program focuses on reclaiming those areas adversely impacting the public safety, health and general welfare and areas contributing to environmental degradation consistent with Sections 401 through 414 of the SMCRA (PL 95-87).

Virginia's AML program will provide for the reclamation of lands and waters affected by past mining, in order to restore these lands and waters to a safe, productive and environmentally sound use, in accordance with Virginia's conservation and land reclamation policies. The Virginia AML program will identify and prioritize the adverse effects of past coal mining, provide planning procedures and administer reclamation.

In order to maximize the reclamation activities with the finite amount of reclamation funds, the Division of Mined Land Reclamation will encourage AML reclamation through re-mining pursuant to the approved Title V regulatory program. This re-mining reclamation concept will reduce overall reclamation cost by utilizing active mining operations to reclaim AML sites.

## **RANKING AND SELECTION 884.13 (c) (2)**

The Virginia AML program uses a priority system, which recognizes the five AML problem priorities as described in Title IV, Section 403 of SMCRA that are:

1. The protection of public health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices;
2. The protection of public health, safety, and general welfare from adverse effects of coal mining practices;
3. The restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity;
4. The protection, repair, replacement, construction or enhancement of public facilities such as utilities, roads, recreation, and conservation facilities adversely affected by coal mining practices; and
5. The development of publicly owned land adversely affected by coal mining practices including land acquired as provided in Title IV for recreation and historic purposes, conservation, and reclamation



purposes and open space benefits. Projects lower than a priority two will not be undertaken until all known higher priority coal projects have either been accomplished, are in the process of being reclaimed, or have been approved for funding by the OSM. Lower priority projects may, however, be undertaken in conjunction with a priority one or two site in accordance with OSM's "Final Guidelines for Reclamation Programs and Projects." Proposed projects will be selected through utilization of the inventory and complaint investigations. Lower priority projects may be funded when all known high priority coal problems have either been reclaimed, are in the process of being reclaimed, or grant funds have been committed to the project.

### **Eligible Coal Lands and Water**

Coal lands and water are eligible for reclamation activities if:

- (a) They were mined for coal or affected by coal mining processes;
- (b) They were mined prior to August 3, 1977, and left or abandoned in either an unreclaimed or inadequately reclaimed condition; and
- (c) There is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under statutes of the State or Federal government, or as a result of bond forfeiture. Bond forfeiture will render lands or water ineligible only if the amount

forfeited is sufficient to pay the total cost of the necessary reclamation. In cases where the forfeited bond is insufficient to pay the total cost of reclamation, additional monies from the Fund may be sought.

- (d) Coal lands and waters damaged and abandoned after August 3, 1977, by coal mining processes are also eligible for funding if:
  - (1) They were mined for coal or affected by coal mining processes; and
  - (2) The mining occurred and the site was left in either an unreclaimed or inadequately reclaimed condition between August 4, 1977, and December 15, 1981; and
    - (i) that any funds for reclamation or abatement that are available pursuant to a bond or other form of financial guarantee or from any other source are not sufficient to provide for adequate reclamation or abatement at the site; or
    - (ii) November 5, 1990, that the surety of the mining operator became insolvent during such period and that, as of November 5, 1990, funds immediately available from proceedings relating to such insolvency or from any

financial guarantee or other source are not sufficient to provide for adequate reclamation or abatement at the site; and

- (3) The site qualifies as a Priority 1 or 2 site pursuant to Section 403 (a)(1) and (2) of the Surface Mining Control and Reclamation Act (SMCRA). Priority will be given to those sites that are in the immediate vicinity of a residential area or that have an adverse economic impact upon a community.

To determine eligibility for both emergency and non-emergency projects, the DMLR shall review and document in writing the mining history of a site (dates). The DMLR shall also document as a part of the eligibility findings that there is no continuing reclamation responsibility under the state or federal law. Eligibility documentation will be kept on file in the DMLR's AML section. DMLR will provide OSM a written finding by the DMLR Director when determining site eligibility for both non-emergency and emergency AML construction.

## **Set Aside Funds**

In accordance with Section 402(g)(6) of SMCRA, Virginia may, without regard to the 3 year limitation referred to in Section 402 (g)(1)(D) of SMCRA, receive and retain up to 10 percent of the total grants made annually under Section 402 (g)(1) and (5) of SMCRA by the Secretary for deposit into either:

- A. a special trust fund established under State law pursuant to which such amounts (together with all interest earned on such amounts) are expended by Virginia solely to achieve the priorities stated in Section 403(a) of SMCRA after September 30, 1995, or
- B. an acid mine drainage abatement and treatment fund established under State law as provided for under 30 CFR Part 876. An interest bearing acid mine drainage abatement and treatment fund will be utilized by Virginia, in consultation with the Natural Resources Conservation Service, to implement acid mine drainage abatement - treatment plans approved by the Secretary of the Interior.

These plans shall provide for the comprehensive abatement of the causes and treatment of the effects of acid mine drainage within qualified hydrologic units affected by coal mining practices. The plan shall include, but shall not be limited to, each of the following:

- (a) An identification of the qualified hydrologic unit.

- (b) The extent to which acid mine drainage is affecting the water quality and biological resources within the hydrologic unit.
- (c) An identification of the sources of acid mine drainage within the hydrologic unit.
- (d) An identification of individual projects and the measures proposed to be undertaken to abate and treat the causes or effects of acid mine drainage within the hydrologic unit.
- (e) The cost of undertaking the proposed abatement and treatment measures.
- (f) An identification of existing and proposed sources of funding for such measures.
- (g) An analysis of the cost-effectiveness and environmental benefits of abatement and treatment measures.

Under this program, the term qualified hydrologic unit means a hydrologic unit:

- (a) in which the water quality has been significantly affected by acid mine drainage from coal mining practices in a manner which adversely impacts biological resources; and
- (b) which contains lands and water that are:
  - 1. eligible pursuant to Section 404 and include any of the priorities stated in SMCRA paragraph (1), (2), or (3) of Section

403 (a); and

2. proposed to be the subject of the expenditures by the State from amounts available from the forfeiture of bonds required under Section 509 or from other State sources to mitigate acid mine drainage.

### **Utilities and Other Facilities**

The Virginia AML program may expend up to 30 percent of the funds granted annually in accordance with SMCRA, for the purpose of protecting, repairing, replacing, constructing, or enhancing facilities relating to water supply; including water distribution facilities and treatment plants, to replace water supplies adversely affected by coal mining practices. If the adverse effect on water supplies occurred both prior to and after August 03, 1977, the project shall remain eligible, notwithstanding the criteria specified in 30 CFR 874.12 (b), if it is found in writing as part of DMLR's eligibility opinion that such adverse affects are due predominately to effects of mining processes undertaken and abandoned prior to August 03, 1977. Such utilities or facilities will be funded by AML monies only after all other sources of possible funding have been identified and satisfactory explanation has been received by DMME regarding why this project is not being fully funded by other sources. To enhance public facilities, it must be demonstrated that: monies from other sources are either not available or such sources are contributing their fair share of construction funds; there is an

urgent need to undertake the project which gives it the same or higher priority than other projects remaining on the coal site inventory; and the enhancement of the facility is necessary to achieve the objectives of Title IV of SMCRA. Enhancement of facilities or utilities pursuant to the above stated criteria shall include upgrading necessary to meet any local, State, or Federal public health or safety requirement. Enhancement shall not include, however, any areal expansion of a utility or facility not necessary to address a specific AML problem.

#### **Reclamation Projects Receiving Less Than 50% Government Funding**

An abandoned mine land reclamation project may be considered for government-financed construction under Virginia program §4 VAC 25-130 Part 707. If the level of government funding for the construction will be less than fifty percent of the total cost because of planned coal extraction, the procedures of this section apply. Such coal removal will be conducted in conformity with Virginia program §4 VAC 25-130 Part 707 and the regulatory definitions for the terms “extraction of coal as an incidental part,” “government financing agency,” and “government-financed construction” contained within the Virginia regulatory program regulations at §4-VAC-25-130-700.5.

In considering such AML construction, the DMLR AML Section (Title IV authority) will consult with the DMLR Reclamation Services Section (Title V authority) to make the following determinations:

1. The likelihood of the coal being mined under a Title V permit. The

determination will take into account available information such as:

- Coal reserves from existing mine maps or other sources;
  - Existing environmental conditions;
  - All prior mining activity on or adjacent to the site;
  - Current and historic coal production in the area; and
  - Any known or anticipated interest in mining the site.
2. The likelihood that nearby or adjacent mining activities might create new environmental problems or adversely affect existing environmental problems at the site.
  3. The likelihood that reclamation activities at the site might adversely affect nearby or adjacent mining activities.

After the above consultation, if it is decided that a government-financed reclamation project is to proceed, then the DMLR AML Section and DMLR Reclamation Services Section must concur to in the following determinations:

1. The limits on any coal refuse, coal waste, or other coal deposits which can be extracted under §4-VAC-25-130 Part 707 and the Virginia regulatory definition of “government-financed construction” at §4-VAC-25-130-700.5; and
2. The delineation of the boundaries of the AML project.



All of the above determinations, the information taken into account in making the determinations, and the names of the parties making the determinations will be documented in the AML project file. For each project, DMLR AML Section will:

- Characterize the site in terms of mine drainage, active slides and slide-prone areas, erosion and sedimentation, vegetation, toxic material, and hydrologic balance;
- Ensure that the reclamation project is conducted in accordance with the provisions of 30 CFR Subchapter R;
- Develop specific-site reclamation requirements, including performance bonds when appropriate in accord with State procedures; and
- Require the contractor conducting the reclamation to provide prior to the time reclamation begins applicable documents that clearly authorize the extraction of coal and payment of royalties.

The contractor shall be required to obtain a coal surface mining permit under the Virginia Coal Surface Mining Reclamation Regulations (Title 4 of the Virginia Administrative Code) for any coal extracted beyond the limits of the incidental coal specified in the AML project file.

### **General Selection and Ranking**

Proposed reclamation projects are evaluated in terms of the factors stated

in this section. These factors are used to determine whether or not proposed reclamation will be undertaken and to assign priorities to projects intended to meet the same objective. In general, the factors include:

- (1) The need for reclamation work to accomplish one or more of the specific reclamation objectives.
- (2) The specific benefits of reclamation that is desirable in the area in which the work will be carried out. Benefits to be considered include, but are not limited to:
  - (a) Protection of human life, health or safety.
  - (b) Protection of the environment, including air and water quality, abatement of erosion and sedimentation, fish, wildlife and plant habitat, aesthetics, historic or cultural resources and recreation resources.
  - (c) Protection of public or private property.
  - (d) Abatement of adverse social and economic impacts of past mining on persons or property including employment, income and land values or uses, or assistance to persons disabled or dislocated by past mining practices.
  - (e) Improvement of environmental conditions, which may be considered to generally enhance the quality of human life.
  - (f) Improvement of the use of natural resources, including post reclamation land uses which:

- (i) Increase the productive capability of the land to be reclaimed.
  - (ii) Enhance the use of surrounding lands consistent with existing land use plans.
  - (iii) Provide for construction or enhancement of public facilities.
  - (iv) Provide for residential, commercial or industrial developments consistent with the needs and plans of the community in which the site is located.
- (3) The acceptability of any additional adverse impacts to people or the environment that will occur during or after reclamation and of uncorrected conditions, if any, that will continue to exist after reclamation.
- (4) The costs of reclamation. Consideration shall be given to both the economy and efficiency of the reclamation work and to the results obtained or expected as a result of reclamation.
- (5) The type and extent of damage, analysis of further degradation that may potentially occur, species and habitat resources present or formerly present that may be recovered, and the potential for reclamation.

These factors are considered by DMLR in determining those projects that are incorporated into the annual grant submission. Generally, these projects are evaluated using site evaluation matrix (figure 1). Projects are ranked from highest to lowest scores.

In selection and prioritizing acid mine drainage projects, such as Appalachian Clean Stream initiative projects, the DMLR will not use the site evaluation matrix form. Instead, DMLR will recognize the flexibility available to raise water quality problems or project to a higher priority (Priority 1 or 2) when the problems have an adverse economic impact upon a community; and DMLR will apply such criteria in assigning AML project priorities.

Parameters and relative weighting values assigned for use in the site evaluation matrix and Water Project Evaluation Guide (figure 2) have been developed by DMLR reclamation professionals to reflect the priorities set forth in Section 403(a) of SMCRA.

### **AML Emergency Program**

Provisions for a state emergency program are provided through Chapter 19, Title 45.1 of the Code of Virginia (VSMCRA). The DMME/DMLR's Abandoned Mine Land Section is responsible for investigation, eligibility findings and reclamation of all emergencies. DMME will comply with all Federal and State regulations while abating emergency situations and:

- (1) Ensure that personnel are dispatched to problem site in a timely

manner.

- (2) Inform OSM of problem sites having the potential for emergency conditions and conduct investigations with OSM as necessary.
- (3) Ensure that personnel responsible for handling the complaint obtain all pertinent information.
- (4) If conditions warrant, notify appropriate emergency assistance organizations and local authorities of conditions at problem site to ensure that immediate protective steps are taken such as fencing, street closing, etc. Also, take temporary measures, as necessary, to protect the public until abatement can be initiated.
- (5) Determine if other local or state institutions can and will correct problem.
- (6) Determine if the site is an eligible abandoned mine as described in the Ranking and Selection Section (Eligible Coal Lands and Water) of this plan.
- (7) Note any procedures required by NEPA, NHPA, Endangered Species Act, Clean Water Act or any other federal, state or local requirements imposed for protection of the environment.
- (8) Obtain a final determination from OSM that an emergency exists or does not exist.



COMMONWEALTH OF VIRGINIA  
 DEPARTMENT OF MINES, MINERALS AND ENERGY  
 DIVISION OF MINED LAND RECLAMATION  
 P. O. DRAWER 900; BIG STONE GAP, VA 24219  
 TELEPHONE: (276) 523-8206

PA#: \_\_\_\_\_

Name: \_\_\_\_\_

**AML SITE EVALUATION MATRIX**

Site Name: \_\_\_\_\_  
 County: \_\_\_\_\_  
 Location: \_\_\_\_\_

Complaint No.: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Quadrangle: \_\_\_\_\_

Site Parameter (see back page)	Parameter Scoring X	Relative Weighting	Final Score
1. Human life, health and safety	X	25	
2. Proximity to residential/public area	X	17	
3. Visitation to site	X	8	
4. Economic impact	X	10	
5. Current land use	X	7	
6. Economic development potential	X	3	
7. Erosion	X	7	
8. Surface instability	X	6	
9. Vegetative cover	X	5	
10. Water quality	X	4	
11. Air quality	X	2	
12. Biota	X	1	
13. Life span of corrected conditions	X	2	
14. Adverse impacts from reclamation	X	2	
15. Site acreage	X	1	

Total Score:	
Priority Rating:	

**Comments:**

**Site Parameter Guidelines**

1. **Human Life, Health and Safety** - Does the AML problem threaten human life, health and safety? A Priority One should always be severe adverse impact.
2. **Proximity to Residential/Public Area** - This means the distance to any private or public property access.
3. **Visitation to Site** - The frequency of public visitation in the area of the problem.
4. **Economic Impact** - The economic impact on the local community or individual as a result of the AML problem.
5. **Current Land Use** - The present use of the area that contains the AML problem.
6. **Economic Development Potential** - Does the site provide an opportunity for economic development, either public or private?
7. **Erosion** -Rills are small, but well defined channels only a few inches deep and easily obliterated by harrowing or other surface treatments. Gullies are too large to be repaired with conventional tillage equipment and usually require heavy equipment and special techniques for stabilization.
8. **Surface Instability** - Includes landslides, subsidence, vertical openings, highwalls, and deep mine face-ups.
9. **Vegetative Cover** - Includes trees and shrubs.
10. **Water Quality** - Includes stream channels, sedimentation and underground mining discharges defined as per the "Southwest Virginia 208 Plan":
  - Hot** - seriously degraded streams;
  - Marginal** - streams with borderline water quality; and
  - Cold** - streams with acceptable water quality.
11. **Air Quality** - The adverse effects to air quality caused by the AML problem.
12. **Biota** - The effects of the AML problem on plants and animals.
13. **Life Span of Corrected Conditions** - How long the reclaimed conditions of the AML problem may be expected to last.
14. **Adverse Impacts from Reclamation** - Problems which may be created or worsened by construction activity (e.g., noise from equipment, dust, sedimentation problems, etc.).
15. **Site Acreage** - Size of the area that contains the AML problem.

## AML WATER PROJECT EVALUATION

Project Name: \_\_\_\_\_

County: \_\_\_\_\_ Planning District \_\_\_\_\_ Date: \_\_\_\_\_

<i>Criteria</i>	<i>Points</i>
<b>I. Public Health &amp; Safety Impacts (30 points)</b>	
Major = 30 points	_____
Moderate = 20 points	_____
Minor = 10 points	_____
<b>II. Number of Households to Benefit (25 points)</b>	
76 or more = 25 points	_____
51 - 75 = 18 points	_____
26 - 50 = 12 points	_____
25 or less = 6 points	_____
<b>III. Appropriate Project Cost / Affordability (15 points)</b>	
A. Appropriate Project Costs (10 points)	
Costs per residential connection:	
\$0 - \$9,999 = 10 points	_____
\$10,000 - \$14,999 = 6 points	_____
\$15,000 - \$19,999 = 3 points	_____
\$20,000 or more = 0 points	_____
B. Affordability (5 points)	
Costs for 4,500 gal. of treated water:	
\$0 - \$19.99/mo. = 5 points	_____
\$20.00/mo.-\$24.99/mo. = 3 points	_____
\$25.00/mo.-\$29.99/mo. = 2 points	_____
\$30.00/mo or more = 1 point	_____
<b>IV. Level of Commitment of Non-AML Funds (15 points)</b>	
51% or more of total project cost = 15 points	_____
26% - 50% of total project cost = 13 points	_____
11% - 25% of total project cost = 10 points	_____
6-10% of total project cost = 5 points	_____
1-5% of total project cost = 1 point	_____
<b>V. Application Data Provided (15 points)</b>	
Excellent = 15 points	_____
Good = 10 points	_____
Fair = 5 points	_____
<b>VI. AML Bonus Award (0-5 points)</b>	
<b>TOTAL</b> (maximum points = 105)	_____

figure 2



### **COORDINATION WITH OTHER PROGRAMS 884.13 (c) (3)**

The DMLR is an active member of the AML Advisory Committee. This committee provides broad program guidance, input and advice to both the Rural Abandoned Mine Program (RAMP) and the State AML Program. The manager of the AML Section, as a representative of the DMLR, prepares and delivers summary descriptions of activities in the State AML Reclamation program during committee meetings. Membership on the Committee is maintained from a representative group of various State and Federal environmental agencies, educational institutions, and customer groups.

The U. S. Department of Agriculture, Natural Resources Conservation Service (NRCS), in Virginia has entered into Memoranda of Agreement (MOA) with the various Soil and Water Conservation Districts throughout the Commonwealth of Virginia. These MOA's enable the RAMP to be administered at a local level by the District Conservationist and staff. The DMLR coordinates with the NRCS in selecting RAMP projects from Virginia's National AML Inventory database. This process eliminates duplication and ensures that the highest priority projects are selected for funding.

The Virginia AML program follows an approved consultation process involving a number of federal and state agencies having either direct or indirect

interests in proposed reclamation projects. Consistent with Federal Assistance Manual requirements to assure compliance with the National Environmental Policy Act, DMLR consults with federal and state agencies to prepare environmental assessment documents on all proposed reclamation projects (A list of agencies consulted is available upon request). Written approval will be obtained from OSM prior to start of construction for Post Act, emergency and non-emergency projects.

### **Coordination With Indian Tribes**

Not applicable in Virginia.

## **LAND ACQUISITION, MANAGEMENT AND DISPOSAL 884.13 (c) (4)**

The Virginia Department of General Services, Division of Engineering and Buildings is charged by the Code of Virginia with certain general responsibilities for acquisition, management and disposal of State-owned real property. The policies and procedures for implementing these responsibilities are available from the Department of General Services. Land acquisition, management and disposition will be consistent with the provisions Section 45.1-263 of the Code of Virginia and Part 4VAC25-130-879 of the VCSMRA Regulations.

### **Land Acquisition**

Among other requirements, the DMME will be responsible for completing a title search (certified by a qualified attorney) and a metes and bounds survey (certified by a qualified land surveyor) prior to the acquisition of any property.

The DMME Director, with approval in advance by OSM, may acquire title to any land or interest therein by purchase, donation or condemnation, if such land or interest is adversely affected by past coal mining practices, and if the Director determines in writing that acquisition of such land is necessary to successful reclamation, and that:

- (1) the acquired land, after restoration, reclamation, abatement, control or prevention of the adverse effects of past coal mining practices, will serve

recreation and historic purposes, conservation and reclamation purposes or provide open-space benefits; and

- (2) Permanent facilities such as a mine drainage treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control or prevention of the adverse effects of past coal mining practices.

Coal refuse disposal sites and all coal refuse thereon may be acquired by the Director if approved in advance by the Office of Surface Mining. Prior to acquisition, the Director shall determine in writing that the acquisition of such land is necessary for successful reclamation or that public ownership is desirable to meet an emergency situation and prevent the recurrence of adverse effects of past coal mining practices.

The Director shall acquire only such interests in the land as are necessary for the reclamation work planned or the post-reclamation use of the land. Interest in improvements on the land, mineral rights, or associated water rights may be acquired if:

- (1) Such interests may not be legally severed from the surface estate; or
- (2) Such interests are necessary to the reclamation work planned or the post-reclamation use of the land; and
- (3) Adequate written assurances cannot be obtained from the owner of the

severed interest that future use of the severed interest will not be in conflict with the reclamation to be accomplished.

An appraisal of the fair market value of all land or interest in land to be acquired shall be obtained from a professional appraiser by the DMME. The appraisal shall state the fair market value of the land as adversely affected by past mining and shall otherwise conform to the requirements of the handbook on "Uniform Appraisal Standards for Federal Land Acquisition" and "Uniform Standards of Professional Appraisal Practice." When practical, land acquisition shall be by purchase from a willing seller. The price paid for land acquired shall reflect the market value of the land as adversely affected by past coal mining practices. When necessary, land or interests in land may be acquired by condemnation. Condemnation procedure shall not be started until all reasonable efforts have been made to purchase the land or interests in land from a willing seller.

The DMME will also comply to the extent applicable, with the Virginia Department of General Services, Division of Engineering and Buildings' Directive No. 1, with the Uniform Relocation Assistance and Real Property acquisition Policies Act of 1972, (Title 25, Chapter 6, Code of Virginia), 41 CFR Part 114-50: Solicitor of the Interior's Regulations for the Approval of Title to Lands and Condemnation, ISRM 6.1 et seq; and regulations of the Attorney General under

Order NO. 440-70 dated October 2, 1970, establishing standards for title approval of lands to be acquired for Federal public purposes.

The Director may accept donations of title to land or interest in land that is necessary for reclamation activities. A donation shall be accepted if the terms or conditions of acceptance are not inconsistent with the objectives or requirements of the program.

Offers to make a gift of such land or interest in land shall be in writing and shall include:

- (1) A statement of the interest which is being offered.
- (2) A legal description of the land and a description of any improvements on it.
- (3) A description of any limitations on the title or conditions as to the use or disposition of the land existing or to be imposed by the donor.
- (4) A statement that:
  - (i) The offeror is the record owner of the interest being offered.
  - (ii) The interest offered is free and clear of all encumbrances except as clearly stated in the offer.
  - (iii) There are no adverse claims against the interest offered.
  - (iv) There is no continuing responsibility by the operator under State or Federal statutory law for reclamation.

- (5) An itemization of any unpaid taxes or assessments levied, assessed or due which could operate as a lien on the interest offered.

If the offer is accepted, a deed of conveyance shall be executed, acknowledged and recorded. The deed shall state that it is made "as a gift under the Virginia Surface Mining Control Reclamation Act of 1979." Title to donated lands shall be in the name of the Commonwealth of Virginia, Department of Mines, Minerals and Energy.

### **Land Management**

The DMME Director may permit the use of land acquired under this Part, pending disposition, for any lawful purpose that is consistent with the reclamation activities and post-reclamation uses for which the land was acquired.

Users of land acquired under this program shall be charged a user fee based on the fair market value of the benefits granted to the user, charges for comparable uses within the surrounding area, or the costs to the Division for providing the benefits, whichever is appropriate. All monies received from user fees will be handled in accordance with Office of Management and Budget (OMB) guidelines and Section 407(f) of SMCRA. The Director may waive the user fee if found in writing that such a waiver is in the public interest. Public notice will be given prior to any final decision on the user fee amount or fee waiver.

Reclaimed land may have covenants to protect the reclamation performed. Provisions may also be made to perform post reclamation maintenance.



## **Land Disposition**

- (1) Prior to disposition, the DMME will publish a notice, which describes the proposed disposition of the land in a newspaper of general circulation within the area where the land is located. The notice shall provide adequate time for public comment and state where copies of plans for disposition of the land may be obtained or reviewed and the address to which comments on the plans should be submitted. The notice will also state that a public hearing will be held if requested by any person.
- (2) The DMME will hold a public hearing if requested as result of the public notice. It will be scheduled at a time and place that affords local citizens and governments the maximum opportunity to participate. The time and place of the hearing shall be announced in a newspaper of general circulation in the area in which the land is located prior to the hearing. All comments received at the hearing will be recorded.
- (3) Make a written finding considering all comments received that the proposed disposition is appropriate and consistent with any applicable local, State or Federal laws, ordinances or regulations.

The Director may transfer, with approval of the Office of Surface Mining, the administrative responsibility for land acquired under this part to any agency

or political subdivision of the Commonwealth with or without cost to that agency.

The agreement, including amendments, under which a transfer is made shall specify:

- (1) The purposes for which the land may be used consistent with that authorized under which the land was acquired; and
- (2) That the administrative responsibility for the land will revert to the Division which acquired the land if, at any time in the future, the land is not used for the purposes specified.

The Director may, with approval by the Office of Surface Mining, transfer title to abandoned and unreclaimed land to the United States to be reclaimed and administered by the Office. The Director may purchase such land from the Office after reclamation is completed, for governmental, educational, recreational, historical, open-space or other public purposes upon such terms as the Office may require. The price to be paid shall not be more than the fair market value of the land in its reclaimed condition less any portion of the land acquisition price paid by the Commonwealth.

The Director may sell any land acquired and reclaimed under this Part to any agency or political subdivision of the Commonwealth.

- (1) Before reclaimed land is sold to such purchasers, the purchaser shall

state in writing the public purposes for which the land is to be used.

(2) The price to be paid by such purchasers shall be the fair market value of the land in its reclaimed condition. The land may be sold at a lower price negotiated by the Director; but the price shall not be less than the cost to the Commonwealth for acquiring and reclaiming the land.

(3) The sales agreement for land sold under this paragraph shall state valid public purposes for which the land may be used. If, at any time in the future, the land is not used for the purposes stated, all right and title to or interest in such land shall revert to the Commonwealth, or to the United States.

The Director, with the approval of the Office of Surface Mining, may sell land acquired under this part by public sale if such land is suitable for industrial, commercial, residential or recreational development and if such development is consistent with land use plans for the area in which the land is located.

(1) Land shall be sold by public sale only if it is found that retention by the Division or disposal under the paragraph of this section is not in the public interest.

(2) Land shall be sold for not less than fair market value under a system of competitive bidding, which includes at a minimum:

- (i) Publication of a notice in a newspaper of general circulation in the locality in which the land is located. The notice shall

describe the land to be sold, state the appraised value, state any restrictive covenants which will be a condition of the sale, and state the time and place of the sale.

- (ii) Provisions for sealed bids to be submitted prior to the sale date or by an oral auction open to the public.

All monies received from disposal of land under this Part shall be managed in accordance with Office of Management and Budget (OMB) guidelines and section 407 of SMCRA.

### **RECLAMATION ON PRIVATE LAND 884.13 (c) (5)**

When reclamation is to be carried out on private land, the DMME shall adhere to the regulation governing appraisal and liens as set forth in Part 4VAC25-130-882 of the VSMCRA Regulations and Section 45.1-264 through 45.1-269 of the Code of Virginia.

A notarized appraisal of private land to be reclaimed that may be subject to a lien under VA program Section 4VAC25-130-882.13 shall be obtained from an independent appraiser. The appraisal shall state:

- (a) The estimated fair market value of the property in its unreclaimed condition; and
- (b) The estimated fair market value of the property as reclaimed.

Except in emergency situations the appraisal shall be made prior to start of reclamation activities. The DMME shall furnish to the appraiser available information in the form of plans, factual data, specifications, etc., to make such appraisals. When the appraisal indicates a significant increase in value and reclamation requires more than six months to complete, an updated appraisal of the estimated market value of the property as reclaimed shall be made to determine if the increase in value as originally appraised has actually occurred. Such updated appraisal shall not include any increase in value of the land as

unreclaimed. If the updated appraised value results in lower increase in value, such increase shall be used as a basis for the lien. However, an increase in value resulting from the updated appraisal shall not be considered in determining a lien. The DMME shall utilize appraisal standards for projects consistent with generally acceptable appraisal practice in the Commonwealth of Virginia.

When any AML condition presents a high probability of substantial physical harm to the health, safety or general welfare of people before the danger can be abated under normal program operations procedures, reclamation activities or abatement procedures shall not be delayed in order to obtain any necessary appraisal. In such instances, after OSM has made an emergency declaration and prior to construction, DMME will gather preliminary landowner information for the affected property(s). DMME will also determine whether the private land to be reclaimed may be subject to a lien, applying the criteria at VA program Section 4 VAC 25-130-882.13(a)(1). If it is determined that the private land to be reclaimed may be subject to a lien, an independent appraisal contractor will be sent to the site, prior to construction, to obtain the information necessary to complete a notarized appraisal, in accordance with VA program 4 VAC 25-130-882.12 (a). The appraisal will be completed as soon as practicable consistent with generally acceptable appraisal practice.

The DMME Director has the discretionary authority to place or waive a lien against land reclaimed as directed by Part 4VAC25-130-882. A lien shall not be placed against the property of a surface owner who acquired title prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operations, which necessitated the reclamation work.

The basis for making a determination of what constitutes a significant increase in market value or what factual situation constitutes a waiver of lien will be made by the Director pursuant to the Congressional intent expressed in Section 408 of SMCRA and consistent with the laws of the Commonwealth governing liens.

Prior to the time of actual filing of any proposed lien, the landowner will be notified of the amount of the proposed lien and will be allowed a reasonable time to pre-pay that amount. The landowner may reimburse the Abandoned Mine Land Fund for the increase in value due to reclamation, or he may choose to have a lien placed upon his property. Whatever agreement is reached will be recorded with the Clerk of Circuit Court.

The Director may waive the lien, if:

- (1) the cost of filing the lien, including indirect costs, exceeds the increase in fair market value resultant from reclamation;
- (2) the reclamation performed on private land primarily benefits the

health, safety, or environmental values of the greater community or area where the land is located;

- (3) reclamation is necessitated by an unforeseen occurrence and the work performed to restore that land will not result in a significant increase in the market value of the land as it existed immediately before the occurrence.

If there is no increase in value, the Director shall execute a Lien Waiver. If a lien is filed, the Director shall, within six months after the completion of reclamation work, file a statement in the Circuit Clerk's office, which includes the name of the owner of the property sought to be charged, an itemized account of the monies expended for the reclamation, and notarized copies of the appraisals. This statement shall also be sent to the owner by certified mail. The lien may be appealed in the manner provided by Section 45.1-268, Code of Virginia.

A lien placed on private property shall be satisfied, to the extent of the value of the consideration received, at the time of transfer of ownership. Any unsatisfied portion shall remain as a lien on the property. The DMME Director shall maintain or renew any lien as required under laws of the Commonwealth or local law.

Monies derived from the satisfaction of liens shall be deposited in the



appropriate abandoned mine reclamation fund account in accordance with OMB guidelines.

DMLR has provided OSM the lien waiver, right of entry, claim of lien, and AML complaint investigation forms (both current and proposed) that it will use in implementing its AMLR Program. OSM has entered the forms into the Virginia Administrative Record under Record No. 900.

### **RIGHTS OF ENTRY 884.13 (c) (6)**

The DMME will obtain rights of entry pursuant to Part 4VAC25-130-877 of the VSCRMA Regulations and Section 45.1-263 of the Code of Virginia.

Prior to entry onto private lands, written consent from the owner of record and lessee, or their authorized agents, will be obtained by the DMME for its authorized agents or contractors to enter upon such lands in order to carry out reclamation activities.

When written consent cannot reasonably be obtained, or the owner(s) is unknown, or the owner(s) cannot be located, or in order to effect entry on all unknown owners, non-consensual entry will be carried out by a notice of intent to enter property to conduct reclamation at least 30 days before entry upon the property. Notice of non-consensual entry shall be in writing, contain the findings required by Part 4VAC25-130-877.13(b), and will be effected by certified mail, return receipt requested, to the owner, if known. If the owner is not known, or if the current mailing address of the owner is not known, notice shall be posted on the property and published once in a newspaper of general circulation in the locality in which the land is located. The notice, posted on the property and advertised in the newspaper, will state where the findings may be inspected or obtained. Such non-consensual entry shall be by exercise of police power.

Written consent or notice of intent shall not be required prior to entry on property to perform emergency reclamation. On emergency projects the DMME shall make reasonable efforts in notifying the owner and obtaining consent prior to entry consistent with the emergency condition that exists. Written notice shall be given to the owner as soon after entry as practical in accordance with the requirements of Part 877.14 of 30 CFR. The giving of notice of intent to enter for purposes of either study and exploration or conducting reclamation shall be a final decision for the purpose of judicial review.

The monies expended from the Fund for work conducted pursuant to any entry, together with the benefits accruing to any such land so entered upon, shall be charged against such land as a lien. This lien may also be waived as described in the previous section of this part. The monies so expended upon any property shall mitigate or offset any claim in or any action brought by any owner of any interest in such premise, for any alleged damages by virtue of such entry, provided, however, that this provision is not intended to create new rights of action or eliminate the existing sovereign immunity of the Commonwealth and its agents and employees.

In addition, the Director may enter into agreements with the U.S. Secretary of the Interior for the emergency restoration, reclamation, abatement, control or prevention of the adverse effect of coal mining practices on Federally owned

lands under the Secretary's authority, including but not limited to, national parks and refuges. Such agreements may provide for the Division, or subcontractors with the Division, to enter upon any land where an emergency exists, as determined by the U.S. Secretary of the Interior or his authorized designee, and on any other land to have access to the land where the emergency exists to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices and to do all things necessary or expedient to protect the public health, safety, or general welfare.

## **PUBLIC PARTICIPATION POLICIES 884.13 (c) (7)**

DMLR will follow procedures set forth by the Virginia Administrative Process Act for publication of all meetings required to be public under the Freedom of Information Act.

### **Participation in the Grant Application Process**

At least thirty (30) days prior to the submission of a grant application to OSM, DMLR will submit a general description of problems and proposed reclamation actions for advertisement in newspapers of general circulation within the affected areas. Interested parties may submit written comments within fourteen (14) days after the last publication of the newspaper advertisement. The newspaper advertisement will include the following statement:

“If requested, the DMLR will also conduct a public meeting, within a reasonable time following the receipt of the request, at the DMME's office in Big Stone Gap, Virginia.”

The comments received during the meeting will be recorded and analyzed.

In addition, the AML Advisory Committee will meet on a regular basis to discuss and analyze the progress of the AML Reclamation program. These meetings are open to the public. Records of public hearings will be kept on file at the DMME Office.

For State Reclamation Program amendments, DMME will elect to utilize

OSM's public participation process rather than hold a separate procedure.

## **ORGANIZATION 884.13 (d) (1)**

The Virginia Department of Mines, Minerals and Energy serves a large and varied group of people, organizations and agencies throughout the Commonwealth. Through its divisions, the agency regulates the mineral industry, provides mineral research and offers advice on wise use of resources. Its programs directly serve the citizens who live near mining operations, mining labor groups, other regulatory agencies, the educational community, the mineral industry, and environmental, consumer and industry special-interest groups. Although headquartered in Richmond, the DMME programs and activities are administered by separate divisions located across the Commonwealth. The effective management of the complex programs and the issues generated by often competing client interests is enhanced by annual agency-wide strategic planning. Divisions within the DMME include:

**Division of Mined Land Reclamation (DMLR)** - The DMLR contains three groups, one which administers the Title IV Program (Abandoned Mine Reclamation) and the other two administer the Title V Program (Control of the Environmental Impacts of Surface Coal Mining). The DMLR is responsible for ensuring the reclamation of land affected by surface and underground coal mining activity. Major functions include regulating surface effects of coal mining,

reclaiming abandoned mine lands, issuing permits, performing inspections, assisting small operators and responding to citizen concerns. Individual descriptions of staff positions and staffing levels for the Abandoned Mine Land Program are described in each yearly grant application to OSM. OSM will be advised of any changes to staff positions or levels that may occur through the grant application process. The AML staff collects data on abandoned mine land problems for inclusion in OSM's Abandoned Mine Land Inventory System (AMLIS). AML updates and maintains the AMLIS in accordance with OSM directives, policies and procedures. AML monitors project engineering and construction contracts by utilizing procurement and inspection personnel to ensure compliance with contract terms, plans, and specifications. A general organization structure of the Abandoned Mine Land Program is demonstrated in Figure 3.

**Division of Mines** - This division's primary mission is to protect the lives and health of all people employed at surface and underground coal mining operations, and insures mine operator compliance with mine safety requirements. The division performs regular mine inspections, investigates accidents and fatalities, conducts training and certification of miners, and provides technical assistance to mine operators.

**Division of Mineral Mining** - The Division of Mineral Mining administers



both health and safety and surface mining reclamation regulatory programs for all non-coal mineral mining operations. Regulating the surface effects and insuring the reclamation of mineral mining operations, enforcing health and safety standards in the mines, issuing permits and licenses, providing industry training, reclaiming orphaned lands, and performing regular inspection are the major functions of this division.

**Division of Gas and Oil** - This division's responsibilities include regulating the effects of gas and oil operations both on and below the surface, permit issuance requirements, client assistance programs, inspection of well sites and gathering pipelines, reclamation of abandoned well sites, protection of correlative rights, and promotion of resource conservation practices.

**Division of Mineral Resources** - This division provides state geological information to industry, government, educational institutions, developers, land-use planners, and to the general public. Extensive data bases are maintained for Virginia's mineral resources, including coal, oil and gas, and a wide variety of industrial minerals and rocks. The division manages Virginia's topographic mapping program in cooperation with the U.S. Geological Survey and the principal user groups in the state.

**Division of Energy** - The Division of Energy coordinates the development and implementation of energy planning and policy in Virginia, taking into

consideration both energy conservation and environmental protection issues. This is accomplished through the Virginia Energy Plan, the goals of which are to increase energy efficiency and conservation in state government and by its clients, and to advance renewable and alternative energy sources in Virginia.

The DMME reports to the Secretary of Commerce and Trade. The Secretary of Commerce and Trade Administrative Head position is appointed by the Governor and confirmed by the General Assembly.

Legal assistance for the DMLR is provided by Assistant Attorney General(s) who are a part of the Attorney General Executive Branch.

# DIVISION OF MINED LAND RECLAMATION

## ABANDONED MINE LAND RECLAMATION PROGRAM ORGANIZATIONAL CHART

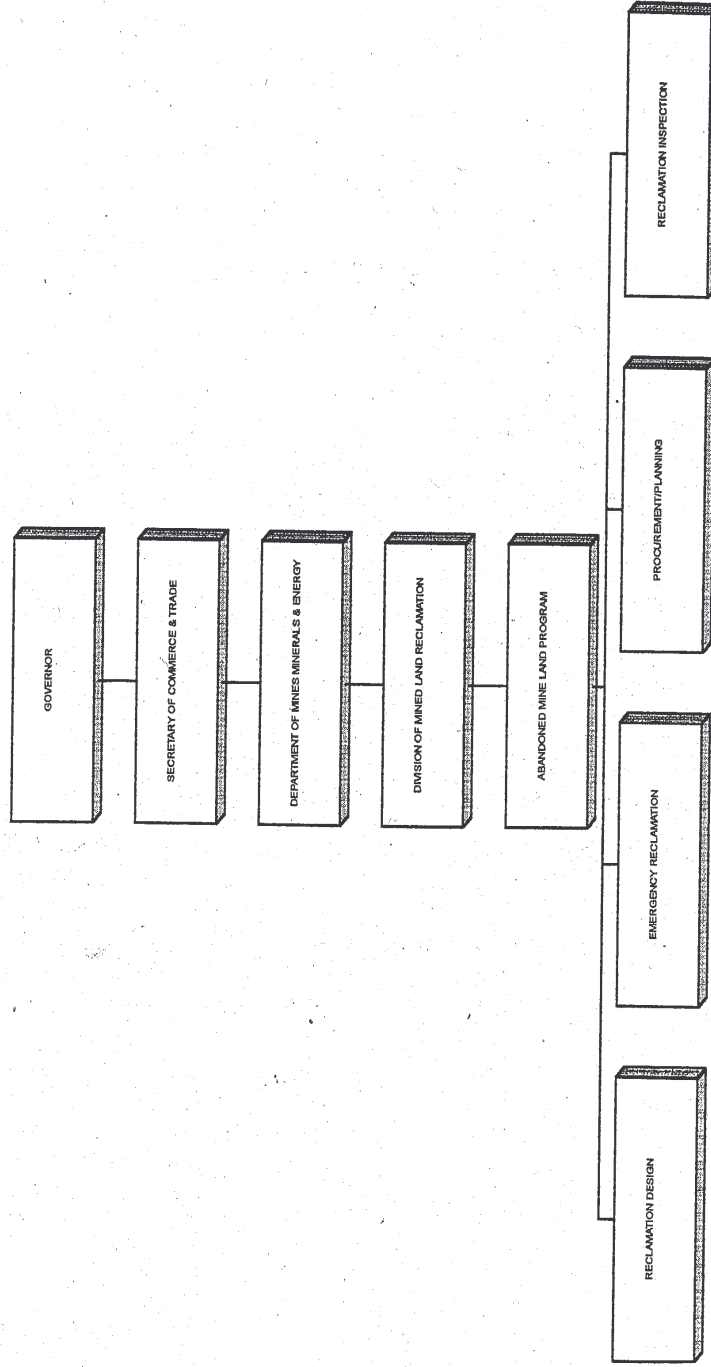


figure 3

## **STAFFING POLICIES 884.13 (d) (2)**

The DMME adheres to the hiring policies and procedures set forth by the Virginia Department of Personnel and Training. Staffing policies that govern the assignment of personnel are:

Virginia Personnel Act

Executive Order No. Two - (issued by the Governor declaring that it is the firm and unwavering policy of the Commonwealth to assure equal opportunity in all facets of state government.)

AA/EEO Mandates

Fair Labor Standards Act

Immigration & Reform Act

Americans with Disabilities

A copy of the policies and procedures are available for viewing at the DMME office upon request. Personnel hired by the DMME will be judged on their knowledge, skills and abilities related to the requirements of the position for which they apply.

### **PURCHASING AND PROCUREMENT 884.13 (d) (3)**

The purchasing and procurement system utilized by the DMLR for all contracts will conform to the requirements of the Grants Management Common Rule codified by the U.S. Department of Interior at 43 CFR Part 12, Subpart C, the Code of Virginia Public Procurement Act, the Virginia Agency Procurement and Surplus Property Manual, and the Federal Assistance Manual Section 1-47-10.

All procurement transactions will be conducted in a manner so as to provide maximum open and free competition.

Proposed procurement actions will be reviewed by procurement and management staff of the DMME to avoid purchasing unnecessary or duplicative items.

Invitations to bids or requests for proposals will be based upon a clear and accurate description of technical requirements; such descriptions will not, in competitive procurements, contain features, which unduly restrict competition.

Contracts are made only with responsible contractors who have the ability to perform the contract. Consideration is given to integrity, past record of performance, financial and technical resources, and accessibility to other necessary resources.

Positive efforts shall be made by the DMME to utilize small business, minority-owned, and women owned business sources of supplies and services.

Formal advertising, with adequate purchase description, sealed bids, and public openings is the method of procurement unless negotiated (i.e., no cost contracts). Fixed-price contract awards are made to the lowest responsive and responsible bidder.

The type of procuring instruments used is appropriate for each particular procurement. The "cost-plus-a-percentage-of-cost" method of contracting is not used.

Contracts will be administered by assigned employees of the DMME to assure contractor conformance with terms, conditions, and specifications of the contract, and to assure adequate and timely compliance.

To receive AML funds, every successful bidder/offeror for an AML contract must be eligible under 4 VAC 25-130-773.15 (b) (1) at the time of contract award to receive a permit or conditional permit to conduct coal surface mining operations. Bidders/offerors determined to be ineligible will be disqualified or refused permission to participate in public contracts as provided by Section 11-63 of the Virginia Public Procurement Act.

**ACCOUNTING SYSTEM 884.13 (d) (4)**

The DMLR utilizes a financial management system that provides for compliance with the Grants Management Common Rule codified by the U. S. Department of Interior at 43 CFR Part 12, Subpart C, OMB Circular No. A-102 (Grants and Cooperative Agreements to State and Local Governments), No. A-87 (Cost Principle for State and Local Governments), No. A-128 (Single Audit Act), and all other applicable state and federal laws and regulations.

The DMLR will safeguard all funds, property and assets in the reclamation program and assure they will be used solely for authorized purposes.

An accounting of actual money spent compared to budgeted amounts will be prepared for each grant and for all projects within each grant utilizing an automated budget tracking system and the state accounting system.

An independent audit will be conducted annually in accordance with the OMB Circular No. A-128, Single Audit Act. The audit will be performed in accordance with "Standards for Audit of Governmental Organizations, Program Activities and Functions."

Findings of audits will be resolved in a timely fashion. The DMME will send, in writing, any recommendations which it may deem necessary to the OSM. The accounting system utilized by the DMLR for the Virginia AML Reclamation Fund will provide for a separate accounting for each source of funding identified in 30 CFR 872.12: (1) grants from OSM under 30 CFR part 886; (2) user

charges collected by the state under 30 CFR part 879; (3) money recovered by the state through satisfaction of liens under 30 CFR part 882; (4) moneys recovered by the state from the sale of land under 30 CFR Part 879; and (5) such moneys as the state chooses to deposit in the State Abandoned Mine Reclamation Fund.

For each grant, DMLR will annually submit reporting forms specified by OSM. Upon project completion, DMLR will submit a completed Abandoned Mine Land Problem Area Description form and any other closeout reports specified by OSM.



**LOCATION OF KNOWN OR SUSPECTED ELIGIBLE LANDS AND**  
**WATER 884.13 (e) (1)**

The known and suspected pre-1977 abandoned mine land problems and eligible post-1977 sites in Virginia are naturally located in the four coalfield regions of the state. Figure 4 depicts the location of known and suspected eligible lands located with the state's boundaries. Figure 4 also shows the locations of river basins in Virginia. Those waters in the Coalfield regions are the location of suspected eligible waters within the state's borders.

Eligibility is determined through a review of information available in AML records, DMME records, and other relevant sources. DMME permit records of post-1977 mined lands are used to assemble an inventory of eligible sites that are either interim period bond forfeitures or insolvent surety sites. The AML program maintains an inventory of AML sites from which funded sites are selected.

# COALFIELDS AND RIVER BASINS OF VIRGINIA

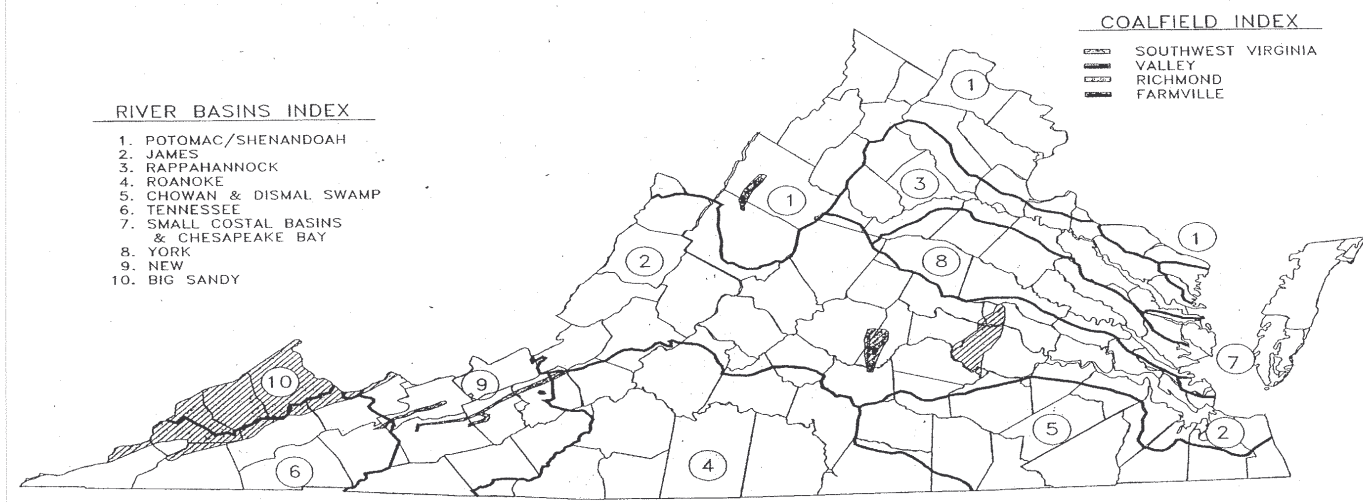


FIGURE 4

**DESCRIPTION OF PROBLEMS OCCURRING ON LANDS AND  
WATERS 884.13 (e) (2)**

Typical AML problems in Virginia's coalfields include, but are not limited to: landslide hazards, highwalls, flooding, erosion, sedimentation, acid drainage, alkaline drainage, fire, subsidence, water loss, dangerous impoundments, abandoned structures and equipment, open mine portals, open mine shafts and refuse areas.

Virginia's AML problems are the result of both underground and surface mining operations. Each individual AML problem varies in degree of concern with some conditions posing a minimal risk with other problems posing a high level of concern. A number of health, safety and environmental problems result from Virginia's AML sites.

### **RECLAMATION PROPOSALS 884.13 (e) (3)**

General examples of proposed reclamation strategies on targeted lands include, but are not limited to:

- (a) Sealing open mine portals to prevent human entry. Options include, but are not limited to backfilling with rock and soil material, mortar or block type seals, or installation of bat gates, if appropriate. These methods include incorporation of proper drainage controls as needed. Endangered habitat surveys are performed prior to sealing.
- (b) Eliminating dangerous highwalls through several reclamation approaches such as slope reduction through excavation and removal or compacted backfill against the sloped unstable wall.
- (c) Burying structures, equipment and debris that are non-toxic, inert, and non-hazardous in compliance with State and Federal laws governing waste disposal.
- (d) Stabilizing refuse areas by grading in place to acceptable design contours or excavating refuse material to an approved disposal site. In either case, a suitable growth medium is established to promote vegetation cover.
- (e) Stabilizing landslides through methods which include: surface

drainage controls, subsurface drainage controls, overburden removal and buttressing as necessary.

- (f) Eliminating hazardous impoundments through an approved remediation plan.
- (g) Reclaiming sediment contributing lands through regrading and/or revegetation with drainage structures installed as necessary.
- (h) Restoring stream channels through sediment removed in accordance with engineered designs, which account for factors such as contributing watershed size, rainfall run-off, channel slope and velocity, channel bank stability, bedload, and other variables that affect stream flow. Removed sediments are stabilized to prevent their reintroduction into the stream. Subsidence will be addressed through grouting or other approved methods of stabilization.
- (i) Grouting subsidence areas will be performed along with other approved methods of stabilization.
- (j) Eliminating of all other targeted abandoned mine land problems will be performed in an approved, safe, and environmentally acceptable manner. Temporary sediment and erosion controls are implemented as necessary during construction and all disturbed areas are revegetated.

The Virginia AML program prepares an environmental document for each project site selected for funding in accordance with the National Environmental Protection Act (NEPA). Consultation with other state and federal agencies occurs before reclamation begins on the sites selected.

Environmental documents are also prepared on AML projects declared emergencies. If site conditions require immediate abatement, the environmental document and consultation process will not delay initiation of abatement action.

### **ECONOMIC BASE 884.13 (f) (1)**

Coal reserves are found in four major fields in Virginia. Only the Southwest Coalfield in the Cumberland Plateau is actively producing coal and contains the majority of abandoned mine lands in the state. The Richmond and Farmville basins, located in the central part of Virginia, ceased production of coal around 1904, while the Valley Coalfield, located in the Ridge and Valley province, ceased coal production after 1971. Through reclamation occurs predominantly in the Southwest Coalfield, some reclamation occurs within the other fields because mining related problems continue to occur years after mining has ceased.

The economic base of a region, as defined here, refers to those activities that export goods or services and thus import moneys from outside the region. The non-economic base of a region refers to those activities that produce goods and services to be consumed within a region, and thus only recirculates money already in the economy. Use of the economic base concept in this analysis is useful because coal mining often dominates other economic activities in coal regions.

Total employment in the Virginia Coalfields is heavily dependent on economic base activities: the Southwest Coalfield due to mining; and the Valley

Coalfield, Richmond Basin and Farmville Basin due to manufacturing. The steep mountains and narrow valleys of the Appalachian Highlands located in the Southwestern region of Virginia encompass many isolated areas heavily involved in coal production.

In contrast, the rolling terrain and proximity to heavily traveled transportation systems of the Valley Basin, Farmville Basin and the Richmond Basin have made these regions more suitable for development and have attracted many industries and more urban populaces. Recent studies have shown that mining employment is also decreasing due to a reduction in the number of mining operations and the utilization of new technology to extract coal. Dominance of economic base activities tend to make the local unemployment rate highly sensitive to fluctuations in the business cycle or other regional perturbations in economic activity. Unemployment, for example, is highest in the Southwest Coalfield where much of the labor force is dependent on coal production.

Another economic base-related activity is agriculture. A second economic base, agriculture, exists for Lee and Scott Counties in the Southwest Coalfield, with sales of tobacco, cattle and dairy products providing most of the agricultural income.

The non-economic base in all coal resource areas experiences fluctuating



growth as a result of increase/decrease economic base activities such as coal mining and manufacturing. Wholesale and retail trade, service and government are the three non-economic base activities that encompass a substantial percentage of the labor force in all of Virginia's coal resource areas.

## **AESTHETIC, HISTORICAL OR CULTURAL AND RECREATION**

### **VALUES 884.13 (f) (2)**

#### **Aesthetic Values-**

Some of the most scenic areas in Virginia are located in the Southwestern end of the state where all of Virginia's coal production now occurs. Southwestern Virginia is characterized by steep sloped, forested mountains and steep, rocky, often cascading streams. Seasonal foliage and colors draw tourists and naturalists to the Southwest region; however, several areas have been scarred and depleted of natural beauty due to past coal mining practices, which have unquestionably degraded aesthetic values.

#### **Historical Values-**

It is recognized that structures and sites of historical and archeological value may be within or in proximity to areas impacted by AML reclamation projects. Virginia's AML program has standard policies and procedures for identification and evaluation of possible historical and archeological resources that may be impacted through reclamation projects. Appropriate steps will be followed to insure that all potential impacts of the reclamation process are mitigated when it is determined that harm may result to significant historic and cultural resources. The Virginia AML program will work closely with the State Department of Historic Resources in order to prevent reclamation from

destroying an historical or archaeologically significant site.

### **Recreational Values-**

The Coalfield Regions of Virginia contain several National, State and local parks offering numerous recreational opportunities. Some of the more significant recreational sites include:

\*Jefferson National Forest - 690,000 acres of wood mountains and valleys which extend from Southwestern Virginia to the James River and forest which lies in the coalfields of Virginia and Kentucky and extending from Natural Bridge, Virginia to Big Stone Gap, Virginia. Hunting, fishing, hiking and camping are the main recreational uses of the land.

\*Mount Rogers National Recreation Area - 107,000 acres extending from Washington County to Wythe County. Recreational activities include the 950 miles of hiking trails including Appalachian Scenic Trail, hunting, fishing, horseback riding and camping.

\*George Washington National Forest - Consists of over one million acres of mountain and valley land in twelve northwestern counties of Virginia with about 100,000 acres extending into West Virginia. Numerous recreational activities are available which include, but are not limited to hunting, camping and fishing.

\*Breaks Interstate Park - Consists of 4,500 acres of land primarily in Dickenson County, Virginia with a small portion located in Pike County, Kentucky. The central feature is the Breaks Canyon, a deep gorge along Russell Fork River. Recreational facilities are available for camping, swimming, hiking, fishing, and whitewater canoeing.

\*Cumberland State Forest - Located in Lee Co., Virginia, Eastern Kentucky, and Tennessee, their park comprises of over 16,500 acres of flat to rolling terrain. Bear Creek Lake Recreational Area with its 55-acre lake is the main recreation attraction, along with water sports, hunting and fishing.

\*Natural Tunnel State Park - Located in Scott County, Virginia, this park highlights an 850-foot long tunnel worn through a limestone bridge. Recreational activities include: hiking, camping, swimming, amphitheater, and local history exhibits.

**ENDANGERED AND THREATENED PLANT, FISH, WILDLIFE AND  
HABITAT 884.13 (f) (3)**

Statutory authority (87 Stat. 884, as amended: 16 U.S.C. 1531 et seq.) for federally listed and proposed threatened and endangered flora and fauna species and federally designated critical habitat is with the U.S. Department of Interior, Fish and Wildlife Service. In 1972, Virginia legislators passed the Virginia Endangered Species Act. This Act provided the authority to the Board of the Virginia Department of Game and Inland Fisheries to adopt the federal list of endangered and threatened species of fish and wildlife; to declare and list by regulation endangered or threatened species in Virginia but not occurring on the federal list; and to implement regulations to further protect these species. With the passage of the Endangered Plant and Insect Species Act in 1979, the General Assembly mandated responsibility to the Virginia Department of Agriculture and Consumer Services, for the protection, conservation, and management of endangered and threatened species of plants and insects.

The Tennessee River system located in Southwestern Virginia contains an aquatic habitat richer in species than any other area of Virginia. The Tennessee drainage includes the Holston, Clinch, and Powell river systems. During the 1978 Symposium on Endangered and Threatened Plants and Animals of Virginia, more than fifty species of freshwater mollusks known to live in these

waters were listed as imperiled (including the federally listed endangered or threatened mussel species) throughout their Virginia or entire range. Stream channelization, siltation, and pollution resulting from pre-law mining operations adversely affected these species. Still today, heavy siltation decreases oxygen concentration and inhibits the respiration and feeding of aquatic organisms and impoundments can drastically reduce available habitat.

According to the 1989 Symposium of Virginia's Endangered Species, it is estimated that 21% of the natural fish species in Virginia have been adversely affected since population studies were first conducted in Virginia. Turbidity, pollution, loss of habitat, and siltation are responsible for the decline of the species. Silt eliminates or destroys habitat, and hinders reproduction and feeding.

Reports presented at the 1989 Symposium on Virginia's Endangered Species, presented 11 mammalian species as state listed endangered or threatened in Virginia. Of these species, eight were found to occur in either caves or island-like boreal pockets. Abandoned, open mine entries serve as potential habitat for endangered bat species. Threatened and endangered mammal species have been adversely affected by habitat loss and alteration, water pollution, and cave disturbances.

DMLR staff conducts on site review of all proposed reclamation projects to

prepare environmental assessment documents prior to project design or construction. Data gathered during this review include information regarding occurrences of threatened or endangered species, federally designated critical habitat, or habitat that may be suitable for recovery, siltation and erosion problems, land mass stability, acid mine discharges, etc.

DMLR consults with state and federal agencies having statutory authority for the protection of threatened or endangered species and critical habitat to identify locations of possible occurrences of state and federally listed and proposed threatened and endangered species and federally designated critical habitat within the project site. A list of these agencies is available upon request and has been included within VA Administrative Record No. VA-906 for reference. Specifically, the locations and descriptions of potential reclamation sites are provided to these agencies to assist them in making determinations if state or federally listed or proposed threatened or endangered species and federally designated critical habitat are present in the project area. DMLR utilizes comments and recommendations from these agencies to prepare reclamation designs, which will protect state and federally listed and proposed threatened and endangered species, enhance their habitat, and aid their recovery. When state and federally listed and proposed species or federally designated critical habitat occur with a project area, DMLR will work with the

U.S. Fish and Wildlife Service and other appropriate state agencies to implement measures that will ensure that no adverse impacts to state and federally listed and proposed species or federally designated critical habitat will result.

Open mine portals are evaluated by DMLR staff for potential habitat for bats by using a form based upon criteria developed by John MacGregor and Hal Bryan (Guide to the Determination of the Suitability of Abandoned Mine Portals as Habitats for Rare or Endangered Wildlife in Virginia) and Bat Conservation International, Inc. (Bats and Mines). Utilizing designs developed by bat gate experts in conjunction with the agencies with authority for protection of the species, bat gates are installed by the DMLR if the mine portals are determined suitable for possible bat habitat and if the roof conditions are stable for construction workers. DMLR has provided OSM a copy of the bat habitat survey form that it will use in implementing its AMLR Program. OSM has entered this form into the VA Administrative Record, under Record No. VA-906.