

**DEPARTMENT OF MINES, MINERALS AND ENERGY
DIVISION OF MINED LAND RECLAMATION**

GUIDANCE MEMORANDUM¹ No. 12-05

Issue Date: August 22, 2005

Subject: Requirements for Permit Signs and Markers

In order to meet the requirements of the **Virginia Coal Surface Mining Reclamation Regulations** at 4 VAC 25-130-816.11 and 4 VAC 25-130-817.11 - Signs and markers, it is necessary for permittees to maintain permit signs and markers until final bond release. The permit markers must be made of durable material, must be visible so that each marker can be seen from the adjacent markers and must be of uniform design. (See Sections 4 VAC 25-130-816.11 and 4 VAC 25-130-817.11)

Special caution should be taken for permit boundaries located near or above residences, as any off permit disturbance could result in property damage or personal injury to residents living near and/or below the permit area. DMLR Inspectors have been instructed to be alert to potential impacts from permitted areas located near or above residences and monitor mining related activities in those areas. As required in House Bill 2573 enacted by the 2005 General Assembly, Section 4 VAC 25-130-816.11² and 4 VAC 25-130-817.11 has been amended under subpart (a) to require, **“Be made of or marked with fluorescent or reflective paint or material if the signs are permit boundary markers on areas that are located on steep slopes above private dwellings or other occupied buildings.”**

In addition, subpart (b) of the aforementioned regulations clearly requires that signs and markers be maintained during the life of the permit - "Maintenance. Signs and markers shall be maintained during the conduct of all activities to which they pertain." The requirement for maintenance of signs and markers throughout the permit life is supported by the March 13, 1979 Federal Register, Vol. 44, No. 50, Rules and Regulations pages 15136 to 15138. The preamble language for the signs and markers regulations reads as follows:

"816.11(a)(3).

Signs and markers should be made of durable material so that they will not deteriorate before the final bond is released on the permit area. It would be to the permittee's advantage that signs and (sic) markers be constructed of durable material so that

¹ This Memorandum is to be considered a guideline issued under the authority of § 45.1-230.A1 of the Code of Virginia which reads:

"In addition to the adoption of regulations under this chapter, the Director may at his discretion issue or distribute to the public interpretative, advisory or procedural bulletins or guidelines pertaining to permit applications or to matters reasonably related thereto without following any of the procedures set forth in the Administrative Process Act (§ 2.2-4000 et seq.). The materials shall be clearly designated as to their nature, shall be solely for purposes of public information and education, and shall not have the force of regulations under this chapter or under any other provision of this Code."

² Section 4 VAC 25-130-817.11 is in the process of being amended to include this requirement.

frequently reposting of them is unnecessary. Since the final bond on a permit area would not be released for 5 or 10 years (depending on the geographic location) following the last augmented seeding, it would be essential that durable signs and markers be posted so the regulatory authority could determine the perimeter of the permit area and the person responsible.

816.11(b).

Maintenance of signs and markers will be the responsibility of the permittee until the final bond is released on the permit area. OSM adopted this provision because it will be necessary for the regulatory authority to know who is responsible for the permit area, the boundary of the permit area, and the location of buffer areas, blasting areas, and topsoil stockpiles, in order to make thorough inspections. Without continued maintenance of these signs and markers, inspection of the permit area would be difficult. "

DMLR Inspectors will check to ensure that the required signs and markers are properly placed and maintained for the life of the permit. While allowed under the regulations, it is strongly recommended that flagging not be used for permit markers, since it is not very durable nor is it highly visible in a wooded area. If flagging is used, the permittee must regularly maintain the flagging so that it meets the regulatory requirements. However, **permit boundary markers for areas located on steep slopes above private dwellings or other occupied buildings must be made of or marked with fluorescent or reflective paint or material.**

If permit markers are not readily noticeable for a section of the permitted area or of the proper material, the DMLR Inspector will issue appropriate enforcement action.

Should you have any questions regarding this guidance document or permit signs and markers, please contact the DMLR's Reclamation Services Manager at (276) 523-8197.