



Proposed Regulation Agency Background Document

Agency name	Department of Mines, Minerals and Energy
Virginia Administrative Code (VAC) citation	4 VAC 25-31
Regulation title	Reclamation Regulations for Mineral Mining
Action title	Amendments to reclamation regulations for mineral mining resulting from periodic review
Date this document prepared	May 16, 2012

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

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

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

DMME = Department of Mines, Minerals and Energy
DMM = DMME's Division of Mineral Mining

Legal basis

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

The Department of Mines, Minerals and Energy is authorized to promulgate regulations necessary to the performance of its duties under §45.1-161.3 of the Code of Virginia. §45.1-180.3 gives the Director of DMM specific authority over the reclamation of mineral mines. This authority is mandatory.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

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

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the "Detail of changes" section.)

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

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.

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

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no requirements more restrictive than applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No localities will be particularly affected.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Townhall website, www.townhall.virginia.gov, or by mail, email or fax to Michael Skiffington, Regulatory Coordinator, Department of Mines, Minerals and Energy, 1100 Bank Street, 8th Floor, Richmond VA 23219-3402; phone (804) 692-3212, fax (804) 692-3237; email michael.skiffington@dmme.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last date of the public comment period.

A public hearing will be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and the Commonwealth Calendar. Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirements create the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.</p>	<p>\$0 – The existing workforce in DMME has the resources to implement the proposed regulatory changes.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>\$0 – DMME does not anticipate any impact to localities in the proposed revisions.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>Any permitted mine site that has a perennial stream passing through or bordering on the permit.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>DMME currently has about 430 active permitted sites. We estimate approximately 10% of the 200 sites in the western portion of the state would be affected, or an estimated 20 sites. Approximately 230 sites are within the Chesapeake Bay watershed, and would already fall under existing riparian buffer standards for that watershed.</p>
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>\$0 administrative, reporting, and recordkeeping costs.</p> <p>The costs to the individual operator are very site specific, and would be moderated by the Director’s ability to grant variances. DMME estimates the cost of compliance as less than \$1,000 per site. Assuming 20 sites, the total cost would therefore be less than \$20,000.</p> <p>There would be \$0 costs associated with commercial or residential development as a consequence of these regulations.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>Improvements in the water quality of state waters passing through or adjacent to mine sites. These improvements outweigh the relatively minor costs of compliance.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

During periodic review, the Department considered the alternative of taking no action. The agency determined, however, that taking no action would result in a regulation containing sections that were unclear, out of date, and not as specific as necessary for achieving the intended purpose of protecting public health and safety in the most cost-effective manner.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

There are no additional reporting requirements proposed. As noted elsewhere, the compliance costs for small businesses are minimal, and compliance flexibility is included.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

No comments were received following publication of the NOIRA.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This regulation will have no impact on the family or family stability.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact if

implemented in each section. Please describe the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.

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

For changes to existing regulations, use this chart:

Current section number	New section number	Current requirement	Proposed change, rationale, and consequences
4 VAC 25-31-10	N/A	No definition of dam break inundation zone	Definition added to increase clarity.
10	N/A	Definition of fifty year storm	Definition modified to increase clarity.
10	N/A	Definition of inert waste	Definition added to increase clarity of waste disposal procedures.
10	N/A	Definition of intermittent stream	Definition modified to increase clarity.
10	N/A	Definition of one hundred year storm	Definition modified to increase clarity.
10	N/A	Definition of on-site generated mine waste	Definition added to increase clarity of waste disposal procedures.
10	N/A	Definition of perennial stream	Definition modified to increase clarity.
10	N/A	Definition of riparian buffer	Definition added to reflect industry best practices.
10	N/A	Definition of state waters	Definition added for consistency.
100	N/A	Mineral mining permits	Language added to facilitate annual permit renewals to be completed electronically.
110	N/A	Permit applications	Language modified to facilitate permit applications to be submitted electronically.
130	N/A	Mineral mining plans	The language is unchanged. Sections 1,2, and 3 were relocated to a more logical sequence.
130	N/A	Mining below the water table	Language relating to the creation of permanent lakes or ponds is modified to expand options available to operators.
150	N/A	Maps	Amended language reflects consistency with the Code of Virginia.
170	N/A	Permit application notifications	Language added to ensure that DMM receives timely notice of permit application notifications.
190	N/A	Availability of permits	Language is added requiring operators to keep a copy of the approved mineral mining plan on site, to reflect current practice.
260	N/A	Form of performance bond	Irrevocable letters of credit are added as an acceptable form of performance bond to allow operators more flexibility in securing the required reclamation bond.
290	N/A	Intensive agricultural use	Language is modified to add flexibility in the determination of bond release to the operator.
330	N/A	Protected structures and sensitive	Language is added related to protected

		features	structures for consistency.
360	N/A	Operation and reclamation	Language related to lakes and ponds is modified to retain consistency with Section 130.
380	N/A	Treatment of acid material	Language is modified to improve clarity and intent of regulation.
405	405	Disposal of Waste	Section added to replace existing Communication Memorandum which already exists under current policy.
420	N/A	Screening	Language is modified to increase options for screening by the operator. Topsoil depth increased to improve conditions for reclamation vegetation.
460	N/A	Intermittent or perennial streams	Language is amended to reflect consistency with existing standards of the Department of Conservation and Recreation (DCR).
490	N/A	Water quality	Language is added allowing the Director flexibility and reference is made to existing State Water Control Board standards.
500	N/A	Water impoundments	This regulation was modified in order to bring DMM requirements in line with current DCR requirements for large impoundments. This will allow a seamless transition from DMM oversight to DCR oversight at the end of mining.
505	505	Reporting impoundment failures	Language is added to require operators to notify DMM immediately if an impoundment suffers a partial or complete failure. This is necessary to protect public safety.
510	N/A	Alternative stabilization methods	Language is added to allow operators additional flexibility with respect to methods of stabilization.
530	N/A	Revegetation process	Language is modified to allow more flexibility by allowing mulch requirements to be approved in the operator's reclamation plan.
540	N/A	Trees and shrubs	Language is stricken to reflect current industry standards regarding tree and shrub planting.
550	N/A	Intensive agricultural use	Language is modified to add flexibility in the determination of bond release to the operator.