



Proposed Regulation Agency Background Document

Agency name	Department of Mines, Minerals and Energy
Virginia Administrative Code (VAC) citation	4 VAC 25 -130
Regulation title	Coal Surface Mining Reclamation Regulations
Action title	Amendments regarding review of decisions not to inspect or enforce and consistency with federal regulations on topsoil standards, revegetation standards, and water diversion design
Date this document prepared	July 8, 2008

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The Department of Mines, Minerals and Energy is amending Virginia's Coal Surface Mining Reclamation Regulations. The proposed amendments will maintain consistency with corresponding federal regulations, allow more natural design of stream restoration channels, and clarify requirements for requesting reviews of decisions not to inspect or enforce. The sections being amended for consistency with federal regulations deal with redistribution of topsoil and topsoil substitutes, and measuring success of revegetation efforts.

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

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

Purpose

Please 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 proposed action is to amend Virginia's Coal Surface Mining Reclamation Regulations to make them consistent with federal regulations on topsoil redistribution and measurement of revegetation success, to allow natural stream restoration design, and to clarify requirements for requesting reviews of decisions not to inspect or enforce. The action will produce environmental benefits in the form of enabling more successful reforestation of reclaimed mine sites, and more natural stream restoration channels. It will also provide clearer instructions to those wishing to apply for a review or request a hearing on the agency's decisions not to inspect or enforce sections of the regulations on particular sites.

Substance

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

The Department of Mines, Minerals and Energy is proposing amendments to existing sections of 4VAC25-130, Coal Surface Mining Reclamation Regulations.

Amendments to 4VAC25-130-816.22, 4VAC25-130-816.116, 4VAC25-130-817.22, and 4VAC25-130-817.116 are proposed to make these sections consistent with corresponding federal amendments regarding redistribution of topsoil and topsoil substitutes, and measuring success of revegetation. The Federal Office of Surface Mining amended its rules effective August 30, 2006 (30CFR Parts 816 and 817;

Fed. Register Vol. 71, No. 168, p. 51684 through p. 51706). As provided by 4VAC25-130-700.2 of the Virginia Coal Surface Mining Reclamation Regulation, "These regulations are promulgated pursuant to Chapter 19, Title 45.1 of the Code of Virginia (1950) as amended. In order for these regulations to receive approval by the United States Secretary of the Interior as part of the Commonwealth's permanent regulatory program, the Federal Surface Mining Control and Reclamation Act requires that these regulations be consistent with (as effective as) applicable regulations issued by the Secretary, contained in 30 CFR Chapter VII." As provided by 4VAC25-130-816.116(b)(3)(i) and 4VAC25-130-817.116(b)(3)(i), the Division consulted with and obtained the approval of the proposed amendments from Virginia's Department of Forestry and Department of Game and Inland Fisheries.

Sections 4VAC25-130-816.43 and 817.43 are being amended to allow the approval of natural stream restoration channel designs, as approved by the U.S. Army Corps of Engineers. This will allow the restoration of an impacted stream channel to one that is more natural and environmentally sound.

Section 4VAC25-130-842.15 is being amended to provide a deadline for filing applications for review and requests for hearing on decisions not to inspect and enforce, and to address such requests to the Director of the Division of Mined Land Reclamation. These changes will make the section consistent with other parts of the chapter and with the Virginia Surface Mining Control and Reclamation Act (Chapter 19 of Title 45.1, Code of Virginia).

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 so indicate.

The proposed action will provide clear benefits to the public in the form of improved reforestation success and more natural stream restoration channels, thereby facilitating the return of more natural conditions to reclaimed mine sites. Benefits to be derived from clarified requirements for requesting review of decisions not to inspect or enforce include certainty about the deadline for making such requests and the specific part of the agency to which such requests should be addressed. No disadvantages are anticipated to the agency or the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which are more restrictive than applicable federal requirements. Include a rationale for the need 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.

None of the requirements in the proposed amendments are 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.

The localities particularly affected by these amendments will be the parts of southwestern Virginia in which surface coal mining occurs: the counties of Buchanan, Dickenson, Lee, Russell, Scott, Tazewell, and Wise, and the City of Norton. The amendments will affect companies performing surface mining reclamation activities and members of the general public affected by coal surface mining. The amendments will have no impact on local governments in the area.

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 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 by mail, email or fax to **Gavin Bledsoe, Legal Services Officer, Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, Virginia, 24219**; phone (276) 523-8157; fax (276) 523-8141; email Gavin.Bledsoe@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 at 9:30 a.m. on September 9, 2008, in Room 219 of DMME's office at 3405 Mountain Empire Road, Big Stone Gap, Virginia. Notice of the public hearing will appear on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov); the notice can also be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	None. The proposed amendments will be administered and enforced with existing staff.
Projected cost of the regulation on localities	None.
Description of the individuals, businesses or other entities likely to be affected by the regulation	The proposed amendments will affect companies performing coal surface mining and reclamation in Virginia.
Agency's best estimate of the number of such entities that will be affected. Please include an	There are currently about 60 active surface coal mines and 120 active underground coal mines in

<p>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>Virginia. These regulations affect only surface mining operations, including the surface portions of underground mines. Approximately 150 of the 180 mines would be classified as small businesses by the definition given.</p>
<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>No additional costs are anticipated. There will be no additional reporting, record keeping, or other administrative costs. The amendments will result in less restrictive requirements for topsoil redistribution, stream channel design, and revegetation and will, therefore, be likely to reduce costs.</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.

The proposed amendments have been determined by the agency to be the least burdensome or intrusive alternative that meets the essential purpose of the action. Sections dealing with topsoil redistribution and revegetation standards of success are being amended to ensure consistency with federal regulations. No other alternative would fulfill the requirement that Virginia’s regulations are as effective as, but no more restrictive than, the corresponding federal regulations. The section regarding stream channel design is being amended to eliminate specific flow-related design specifications and allow more natural designs as approved by the U.S. Army Corps of Engineers. No other alternative would achieve this result. The section dealing with review of decisions not to inspect or enforce is being amended to attain consistency with the Virginia Surface Mining Control and Reclamation Act and consistency within the Virginia Coal Surface Mining Reclamation Regulations. The alternative of taking no action would result in a regulatory chapter that is inconsistent with federal regulations and the Code of Virginia, and is internally inconsistent.

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.

Less stringent compliance or reporting requirements, including the exemption of small businesses and the establishment of performance standards to replace design or operational standards, would not meet the agency’s goal of assuring that coal surface mining occurs in a safe and environmentally sound manner. The existing regulations govern established practices in the mining industry; these amendments

represent relatively small changes to the existing regulations and therefore will have a minimal impact on businesses.

Public comment

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

No public comments were received.

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.

The proposed amendments intended to improve reforestation success and allow more natural stream restoration channel designs will accelerate the return of more natural conditions to reclaimed sites. These results will benefit families living near mined areas by providing more rapid recovery of the landscape after mining. The amendment clarifying requirements for requesting a review of decisions not to inspect or enforce will provide clearer instructions to those wishing to appeal such decisions. None of these amendments will erode the family’s authority and rights in the education, nurturing, and supervision of their children, nor will they discourage a family’s economic self-sufficiency, self-pride, or assumption of responsibility. The amendments will not erode the marital commitment or decrease disposable family income.

Detail of changes

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

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

The proposed action will amend sections of 4VAC25-130, Coal Surface Mining Reclamation Regulations, as detailed in the following table:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
4VAC25-130-816.22(d)(1)	N/A	Topsoil shall be redistributed in	Revise to allow the use of topsoil substitutes and variation of soil

		approximately uniform thickness.	<p>thickness, dependent on a permit's approved reclamation plan.</p> <p>This change in the Virginia regulation will ensure it is consistent with the corresponding and applicable Federal rules at 30 CFR Parts 816 and 817; Fed. Register Vol. 71, No. 168, p. 51684 through 51706, which became final on August 30, 2006.</p>
4VAC25-130-816.43(a)(4) & (a)(5)	N/A	Stream channels shall be reconstructed in accordance with the specific requirements set forth in this rule.	<p>Revise and amend subpart (a)(4) and delete (a)(5).</p> <p>This change in the Virginia regulation will allow the approval of natural stream restoration channel design approved by the U.S. Army Corps of Engineers.</p>
4VAC25-130-816.116(b)(3) & (v)(C)	N/A	The success of vegetation shall be determined on the basis of tree and shrub stocking and herbaceous vegetative ground cover of 90%.	<p>Revise to provide that the stocking of trees would be in accordance with the approved reclamation plan and herbaceous cover established to enhance tree growth while controlling erosion and supporting the postmining land use.</p> <p>This change in the Virginia regulation will ensure it is consistent with the corresponding and applicable Federal rules at 30 CFR Parts 816 and 817; Fed. Register Vol. 71, No. 168, p. 51684 through 51706, which became final on August 30, 2006.</p>
4VAC25-130-817.22(d)(1)	N/A	Topsoil shall be redistributed in approximately uniform thickness.	<p>Revise to allow the use of topsoil substitutes and variation of soil thickness, dependent on a permit's approved reclamation plan.</p> <p>This change in the Virginia regulation will ensure it is consistent with the corresponding and applicable Federal rules at 30 CFR Parts 816 and 817; Fed.</p>

			Register Vol. 71, No. 168, p. 51684 through 51706, which became final on August 30, 2006.
4VAC25-130-817.43(a)(4) & (a)(5)	N/A	Stream channels shall be reconstructed in accordance with the specific requirements set forth in this rule.	Revise and amend subpart (a)(4) and delete (a)(5). This change in the Virginia regulation will allow the approval of natural stream restoration channel design approved by the U.S. Army Corps of Engineers.
4VAC25-130-817.116(b)(3) & (v)(C)	N/A	The success of vegetation shall be determined on the basis of tree and shrub stocking and herbaceous vegetative ground cover of 90%.	Revise to provide that the stocking of trees would be in accordance with the approved reclamation plan and herbaceous cover established to enhance tree growth while controlling erosion and supporting the postmining land use. This change in the Virginia regulation will ensure it is consistent with the corresponding and applicable Federal rules at 30 CFR Parts 816 and 817; Fed. Register Vol. 71, No. 168, p. 51684 through 51706, which became final on August 30, 2006.
4VAC25-130-842.15(d)	N/A	Persons requesting review of a decision not to inspect or enforce must file an application for review and request for hearing.	Revise to include a 30-day deadline for filing applications for review and requests for hearing, and to address such requests to the Director of the Division of Mined Land Reclamation. The change will ensure that this section is consistent with time limits to request formal administrative review of agency decisions in other sections of the regulation (e.g., 4VAC25-130-775.11) and under the Virginia Surface Mining Control and Reclamation Act.

Enter any other statement here

