

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

**GUIDANCE MEMORANDUM<sup>1</sup> No. 26-09**

**Issue Date: February 17, 2009**

**Subject: Aquatic Species-Specific Protective Measures Guide to Permitted Coal Mining Activities in Virginia**

This memorandum provides guidance on species specific protective measures in accordance with the 1996 Biological Opinion and Conference Report on the Surface Mining Control and Reclamation Act of 1977. These species specific protective measures may be used by coal mining operations in Virginia. These measures are for the protection of aquatic species from potential adverse affects from coal mining operations.

The following "Aquatic Species-Specific Protective Measures Guide to Permitted Coal Mining Activities in Virginia" becomes effective immediately and any new permit application submitted to Department of Mines, Minerals and Energy (DMME)/Division of Mined Land Reclamation (DMLR) should incorporate the protective measures as appropriate.

As noted in the attached guide, the protective measures should be used when listed species are within ten stream miles of a preparation plant or slurry impoundment and within five stream miles of other coal mining operations such as a surface mine or an underground mine. Use of these protective measures can result in an expedited review of the section of a permit application addressing listed species or critical habitat.

Should you have any questions regarding this guidance memorandum, please contact the DMLR Technical Services Manager at (276) 523-8156.

---

<sup>1</sup> 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."