



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department of Mines, Minerals and Energy
Virginia Administrative Code (VAC) citation	4VAC25-130
Regulation title	Coal Surface Mining Reclamation Regulations
Action title	Amendments regarding ownership and control, valid existing rights, self-bonding, and other issues
Date this document prepared	4/21/09

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*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The Department of Mines, Minerals and Energy is amending 4VAC25-130, Coal Surface Mining Reclamation Regulations. Amendments to a number of sections for a variety of reasons are being carried out in this action. Sections dealing with valid existing rights and ownership and control of coal surface mining activities are being amended to maintain consistency with corresponding federal rules. Sections dealing with self bonding are being amended to replace the use of a cognovit note with an indemnity agreement, a preferable means for achieving the same assurance of bond. Reference to a board that no longer exists is being removed. The time period for public bodies to comment on permit applications is being amended to make it consistent with the time period allowed for individuals to comment. A subsection containing definitions of terms is being eliminated and the definitions moved to a different section containing definitions for consolidation and internal consistency. These amendments will make the chapter more consistent with federal regulations, more accurate, easier to understand, and more aligned with standard agency practices.

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., 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.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The regulation chapter that is the subject of these amendments assures that surface coal mining activity is carried out in a safe and environmentally sound manner and that mined land is restored to a productive use after mining has ceased. The proposed amendments are needed to maintain the accuracy and consistency of the chapter, and are therefore necessary to maintain the essential purpose of the regulation. The proposed amendments will make the chapter more consistent with federal rules, more internally consistent, easier to understand and more aligned with standard practices. Therefore, no issues are foreseen.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

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
4VAC25-130-700.5	N/A	Terms used in subsequent sections of chapter are defined	Add or amend definitions as needed to maintain consistency with the corresponding federal rule; add definitions moved from other sections for

			consistency; delete definitions no longer necessary.
4VAC25-130-773.13	N/A	Public entities have 30 days from notification to submit comments on permit applications, revisions, and renewals.	Amend to allow comments to be submitted within 30 days of notification or last publication date of newspaper notice, whichever is later. Makes comment period for public entities consistent with those for citizens.
4VAC25-130-773.15	N/A	Agency considers applicant’s history when reviewing permit applications	Expands provisions for considering the applicant’s past history, including history of violations, in determining whether to issue a permit. Needed to maintain consistency with federal regulation amended 12/3/2007.
4VAC25-130-773.20	N/A	Upon finding that a permit was issued improvidently, the agency can suspend it until the violation is abated or penalties and fees paid.	Permit suspension option is amended to provide for the serving of a preliminary finding based on evidence sufficient to establish a <i>prima facie</i> case that the permit was improvidently issued and that the permit may be suspended or rescinded. Needed to maintain consistency with federal regulation amended 12/3/2007.
4VAC25-130-773.21	N/A	To suspend or rescind a permit, the division must serve the permittee a notice of proposed suspension and rescission that included the reason for the finding.	New subsection allows a person who is subject to a suspension or rescission notice to challenge in writing his inclusion in an ownership or control listing or finding. Needed to maintain consistency with federal regulation amended 12/3/2007.
	4VAC25-130-774.12	N/A	For determining future applicant eligibility, the division will utilize the federal Applicant Violator System to maintain ownership, control, and violation records. Needed to maintain consistency with federal regulation amended

			12/3/2007.
4VAC25-130-774.17	N/A	No transfer, assignment or sale of permit rights shall be made without written approval of the division.	The division may allow a prospective successor of interest to continue operations under the existing permit upon demonstration that adequate bond coverage will be maintained. Needed to maintain consistency with federal regulation amended 12/3/2007.
4VAC25-130-778.13	N/A	Permit application shall contain specific identification information pertaining to the applicant.	Expand required information to include: information about the operator, if different than the applicant; information about each business entity in the applicant's and operator's organizational structure; information about every Officer, Partner, Member, Director, and persons owning more than a 10 percent interest; a list of all previous names under which the applicant, operator, partners, or principal shareholders currently or previously operated surface coal mining operations in the U.S. for the previous five years; any pending permit applications; and any other surface coal mining operations the applicant or operator controlled during the previous five years. Needed to be consistent with and as effective as federal regulation amended 12/3/2007
4VAC25-130-778.14	N/A	Permit application must contain a list of all violation notices and unabated cessation orders received by the applicant for any surface coal mining operation controlled by the applicant or	Change "any person who owns or controls the applicant" to "operator." Needed to be consistent with and as effective as federal regulation amended 12/3/2007.

		any person who owns or controls the applicant.	
4VAC25-130-800.52	N/A	Board of Conservation and Economic Development has reinstatement authority with the Director. Applicant must pay civil penalty for reinstatement. Director shall use civil penalties to pay for reclamation on other abandoned coal mine lands.	Remove reference to the Board of Conservation and Economic Development, which no longer exists. Change “civil penalty” to “reinstatement fee”; the fee is technically not a civil penalty. These amendments are made for accuracy. Expand Director’s authority to use reinstatement fees to pay for activities that support reclamation, such as research. This is current agency practice.
4VAC25-130-801.12	N/A	The Director may accept an applicant’s bond without separate surety, if applicant can demonstrate sufficient financial resources.	Amend to require annual certification of financial solvency by a certified public accountant. This change has the effect of allowing a single annual statement of solvency for all of an applicant’s operations, rather than a separate statement for each operation.
4VAC25-130-801.13	N/A	The division may accept self-bond under the alternative bonding system, Coal Surface Mining Reclamation Fund, for underground coal mining operations in the form of a cognovit note or for a surface coal mining operations in the form of an indemnity agreement.	Amend to eliminate the use of a cognovit note and replace with indemnity agreement. The indemnity agreement is provided for under §45.1-270.3(C)(2) of the Code of Virginia for surface mining operations. This provides for a consistent bonding instrument for both surface and underground mining operations seeking a self bond under the Coal Surface Mining Reclamation Fund (§45.1-270.1 <i>et seq</i>)
4VAC25-130-840.14	N/A	The division has the option of making	Amend to allow for electronic transmittal of copies of permit

		copies of documents pertaining to permit applications available to the public by placing copies at a government office in the locality where the mining is occurring or mailing copies to any resident of the area upon request.	documents to interested parties and placement of procedures for obtaining such information at division offices and on its internet site. Convenience of electronic transmittal option is advantageous to the division and the public.
4VAC25-130-846.2	N/A	Defines “Knowingly”, “Violation”, and “Willfully”	Repeal this section and place definitions in 4VAC25-130-700.5 to centralize location of definitions pertaining to these parts of the chapter.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

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. There are no alternatives that would meet the requirement that Virginia’s regulations are as effective as, but no more restrictive than, the related federal requirements. The alternative of taking no action would result in a regulatory chapter that is inconsistent with federal regulations.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also 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 **Harve Mooney, Legal Services Officer, Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, Virginia, 24219; phone (276) 523-8271; fax (276) 523-8141; email Harve.Mooney@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 day of the public comment period.

A public hearing may be held following the publication of the proposed stage of the regulatory action in the Virginia Register of Regulations.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The agency is inviting comment on whether to use the participatory approach in the development of a proposal.

Family impact

Assess the potential 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 action will amend a chapter of regulations that ensures that surface coal mining activity is carried out in a safe and environmentally sound manner and that mined land is restored to a productive use after mining has ceased. The action will make the chapter more consistent with federal regulations, more accurate, and easier to understand. Nothing in the proposed action is anticipated to strengthen or erode the rights of parents or the marital commitment, nor will it encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for one's family. It is not anticipated to increase or decrease disposable family income in any way.