



## Final Regulation Agency Background Document

<b>Agency name</b>	Department of Mines, Minerals and energy
<b>Virginia Administrative Code (VAC) citation</b>	4 VAC 25-130
<b>Regulation title</b>	Coal Surface Mining Reclamation Regulations
<b>Action title</b>	Amendments regarding review of decisions not to inspect or enforce and consistency with federal regulations on topsoil standards, revegetation standards, and water diversion design
<b>Date this document prepared</b>	10/22/08

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

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.*

The Department of Mines, Minerals and Energy is amending Virginia's Coal Surface Mining Reclamation Regulations. The 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. No changes have been made since publication of the proposed stage.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

On January 28, 2009, the Department of Mines, Minerals and Energy amended 4VAC25-130, Coal Surface Mining Reclamation Regulations.

## 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 numbers, 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.*

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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. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

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The purpose of this 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 identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.*

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The Department of Mines, Minerals and Energy is amending 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 will 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 there are no disadvantages to the public or the Commonwealth, please indicate.*

These amendments will provide 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.

**Changes made since the proposed stage**

*Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.*

No changes have been made since the proposed stage.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.*

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Nancy Davis	Whether amendments to 4VAC25-130-816.22 and 4VAC25-130-817.22 would allow flyash dumping and proposing an “absentee land owner tax”.	Amendments to 4VAC25-130-816.22 and 4VAC25-130-817.22 concern topsoil and other soil materials recovered in the mining process that may be used as topsoil material to promote post-mining revegetation. The proposed amendments do not concern flyash. Flyash is not a topsoil or topsoil substitute material. It is a by-product from the coal combustion process. DMME has no authority or jurisdiction regarding property taxation.
Coalfield Beef Cattle & Land Use Association	Membership of approx. 100 beef cattle framers in Dickenson, Wise, & Buchanan Counties. Encourages surface mined land owners to consider options for potential uses in the present and future for agriculture and beef cattle production; develop surface mined land for agricultural purposes, prisons, hospitals, banks, etc. to allow counties to grow and expand. Concerns about basic conservation program of erosion and sediment control, as it relates to woody plant growth.	The forestry reclamation approach allowed under revised 4VAC25-130-816.116 and 4VAC25-130-817.116 requires less vegetative cover by grasses to reduce competition with woody species. Research conducted through such agricultural and reforestation projects as the <u>Powell River Project Education and Research Center</u> in Wise County have shown that less compaction and reduced grass ground cover significantly enhance reforestation success. Less compaction also increases infiltration of surface water, reducing erosion and sedimentation that occurs from compacted areas.

**All changes made in this regulatory action**

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

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
<b>4VAC25-130-816.22(d)(1)</b>	N/A	Topsoil shall be redistributed in approximately uniform thickness.	Revise to allow the use of topsoil substitutes and variation of soil thickness, dependent on a permit’s approved reclamation plan.  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.
<b>4VAC25-130-816.43(a)(4) &amp; (a)(5)</b>	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.
<b>4VAC25-130-816.116(b)(3) &amp; (v)(C)</b>	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.
<b>4VAC25-130-817.22(d)(1)</b>	N/A	Topsoil shall be redistributed in approximately uniform thickness.	Revise to allow the use of topsoil substitutes and variation of soil thickness, dependent on a permit's approved reclamation plan.  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.
<b>4VAC25-130-817.43(a)(4) &amp; (a)(5)</b>	N/A	Stream channels shall be reconstructed in accordance with the specific requirements	Revise and amend subpart (a)(4) and delete (a)(5).  This change in the Virginia regulation will allow the approval of natural

		set forth in this rule.	stream restoration channel design approved by the U.S. Army Corps of Engineers.
<b>4VAC25-130-817.116(b)(3) &amp; (v)(C)</b>	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>
<b>4VAC25-130-842.15(d)</b>	N/A	Persons requesting review of a decision not to inspect or enforce must file an application for review and request for hearing.	<p>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.</p> <p>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.</p>

**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.

### 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.*

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The amendments dealing with reforestation success and 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.