

Virginia Administrative Code
Title 4. Conservation and Natural Resources
Agency 25. Department of Mines, Minerals and Energy
Chapter 130. Coal Surface Mining Reclamation Regulations

Part 700
General

4VAC25-130-700.1. Scope.

These regulations, consisting of Parts 700 through 882, establishes the procedures and requirements through which the Department of Mines, Minerals, and Energy and its Division of Mined Land Reclamation will implement the Virginia Coal Surface Mining Control and Reclamation Act of 1979 (Chapter 19 (§ 45.1-226 et seq.) of Title 45.1 of the Code of Virginia) and the Federal Surface Mining Control and Reclamation Act of 1977, (P.L. 95-87, 91 Stat. 445 (30 USC §§ 1201 et seq.)), pursuant to the Virginia permanent regulatory program, as approved by the United States Secretary of the Interior.

This Chapter is divided into nine Subchapters.

(a) Subchapter VA contains introductory information intended to serve as a guide to the rest of the Chapter and to the regulatory requirements and definitions generally applicable to the programs and persons covered by the Act.

(b) Subchapter VD identifies the procedures that apply to surface coal mining and reclamation operations conducted on Federal lands rather than State or private lands and incorporates by reference the applicable requirements of the State regulatory program: Subchapters VG, VJ, VK, AND VL.

(c) Subchapter VF implements the requirements of the Act for--

(i) Designating lands which are unsuitable for all or certain types of surface coal mining operations;

(ii) Terminating designation no longer found to be appropriate; and

(iii) Prohibiting surface coal mining and reclamation operations on those lands or areas where the Act states that surface coal mining operations should not be permitted or should be permitted only after specified determinations are made.

(d) Subchapter VG governs applications for and decisions on permits for surface coal mining and reclamation operations within the Commonwealth. It also governs coal exploration and permit application and decisions on permits for special categories of coal mining in the Commonwealth. Regulations implementing the experimental practices provision of the Act are also included in Subchapter VG.

(e) Subchapter VJ sets forth requirements for performance bonds and public liability insurance for surface mining, underground mining and coal exploration permits.

(f) Subchapter VK sets forth the environmental and other performance standards which apply to coal exploration and to surface coal mining and reclamation operations, as well as to special mining situations involved with steep slope mining, mountaintop removal mining, auger mining and prime farmlands.

(g) Subchapter VL sets forth the inspection, enforcement, and civil penalty provisions.

(h) Subchapter VM sets forth the requirements for the training, examination, and certification of blasters.

(i) Subchapter VR sets forth the regulations for the Abandoned Mine Land Program.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 700.1, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-700.2. Authority and citation to federal law.

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. The numbering system used for the Virginia regulations corresponds to the numbering system used for the applicable Federal regulations in 30 CFR Chapter VII, except that the numbering for the Virginia regulations contains the prefix "4VAC25-130-xxx.xxx." All references to Sections, Parts, or Subchapters are made to this chapter, unless otherwise noted.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 700.2, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-700.3. Effective date.

(a) The regulations promulgated pursuant to Chapter 19 (§ 45.1-226 et seq.) of Title 45.1 of the Code of Virginia became effective on December 15, 1981, the date on which the Secretary of the Interior approved the Commonwealth's permanent regulatory program.

(b) The regulations in this chapter shall become effective when approved by the Secretary of the Interior, except, for existing operations permitted pursuant to Chapter 19, Title 45.1-

(1) All provisions except for those related to the contents of permit applications of Subchapter VG and the performance standards of Subchapter VK shall apply.

(2) The content of permit application requirements and the performance standards of the

regulations approved on December 15, 1981, shall be complied with.

(3) All provisions of this chapter shall apply when the existing permit is significantly revised or renewed.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 700.3, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-700.5. Definitions.

As used throughout this chapter, the following terms have the specified meanings except where otherwise indicated.

"Abatement plan" means an individual technique or combination of techniques, the implementation of which is designed to result in reduction of the baseline pollution load. Abatement techniques include but are not limited to: addition of alkaline material, special plans for managing toxic and acid forming material, regrading, revegetation, and daylighting.

"Acid drainage" means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, discharged from an active, inactive, or abandoned surface coal mining and reclamation operation or from an area affected by surface coal mining and reclamation operations.

"Acid-forming materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acid that may create acid drainage or leachate.

"Act" means the Virginia Coal Surface Mining Control and Reclamation Act of 1979 as amended (Chapter 19 (§ 45.1-226 et seq.) of Title 45.1 of the Code of Virginia).

"Actual improvement" means the reduction of the baseline pollution load resulting from the implementation of the approved abatement plan: except that a reduction of the baseline pollution load achieved by water treatment may not be considered as actual improvement.

"Adjacent area" means the area outside the permit area where a resource or resources, determined according to the context in which adjacent area is used, are or reasonably could be expected to be adversely impacted by proposed mining operations, including probable impacts from underground workings.

"Administratively complete application" means an application for permit approval, or approval for coal exploration where required, which the division determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate processing and public review.

"Adverse physical impact" means, with respect to a highwall created or impacted by remining, conditions such as sloughing of material, subsidence, instability, or increased erosion of highwalls, which occur or can reasonably be expected to occur as a result of remining and which pose threats to property, public health, safety, or the environment.

"Affected area" means any land or water surface area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands, the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings. The affected area shall include every road used for purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road is a public road.

"Agricultural use" means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.

"Anthracite" means coal classified as anthracite in ASTM Standard D 388-77. Coal classifications are published by the American Society of Testing and Materials under the title, "Standard Specification for Classification of Coals by Rank," ASTM D 388-77, on pages 220 through 224. Table 1 which classifies the coals by rank is presented on page 223. This publication is hereby incorporated by reference.

"Applicant" means any person seeking a permit, permit revision, renewal, and transfer, assignment, or sale of permit rights from the division to conduct surface coal mining and reclamation operations or, where required, seeking approval for coal exploration.

"Applicant violator system" or "AVS" means an automated information system of applicant, permittee, operator, violation, and related data the federal Office of Surface Mining Reclamation and Enforcement (OSM) maintains and the division utilizes in the permit review process.

"Application" means the documents and other information filed with the division under this chapter for the issuance of permits; revisions; renewals; and transfer, assignment, or sale of permit rights for surface coal mining and reclamation operations or, where required, for coal exploration.

"Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined areas so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles and coal refuse piles eliminated. Permanent water impoundments may be permitted where the division has determined that they comply with 4VAC25-130-816.49, 4VAC25-130-816.56, and 4VAC25-130-816.133 or 4VAC25-130-817.49, 4VAC25-130-817.56, and 4VAC25-130-817.133.

"Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specific use.

"Auger mining" means a method of mining coal at a cliff or highwall by drilling or cutting holes into an exposed coal seam from the highwall and transporting the coal along the auger bit to the surface.

"Authorized officer" means any person authorized to take official action on behalf of a federal agency that has administrative jurisdiction over federal lands.

"Baseline pollution load" means the characterization of the pollution material being discharged from or on the pollution abatement area, described in terms of mass discharge for each parameter, including seasonal variations and variations in response to precipitation events. The division will establish in each authorization the specific parameters it deems relevant for the baseline pollution load.

"Best professional judgment" means the highest quality technical opinion forming the basis for the terms and conditions of the treatment level required after consideration of all reasonably available and pertinent data. The treatment levels shall be established by the division under §§ 301 and 402 of the federal Water Pollution Control Act (33 USC §§ 1311 and 1342).

"Best technology" means measures and practices which are designed to abate or ameliorate to the maximum extent possible pollutional discharges from or on the pollution abatement area. These measures include engineering, geochemical or other applicable practices.

"Best technology currently available" means equipment, devices, systems, methods, or techniques which will:

(a) Prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event result in contribution of suspended solids in excess of requirements set by the applicable state or federal laws;

(b) Minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife, and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, terms, methods, or techniques which are currently available anywhere as determined by the division even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with Parts 816 and 817 of this chapter. Within the constraints of the permanent program, the division shall have the discretion to determine the best technology currently available on a case-by-case basis, as authorized by the Act and this chapter.

"Cemetery" means any area of land where human bodies are interred.

"Certification" when used in regards to construction certifications by qualified registered professional engineers, is not considered to be a warranty or guarantee.

"Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77, referred to and incorporated by reference in the definition of "anthracite."

"Coal exploration" means the field gathering of:

(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) The gathering of environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of this

chapter.

"Coal lease" means a federal coal lease or license issued by the Bureau of Land Management pursuant to the Mineral Leasing Act and the federal Acquired Lands Leasing Act of 1947 (30 USC § 351 et seq.).

"Coal mine waste" means coal processing waste and underground development waste.

"Coal mining operation" means, for the purposes of Part 705 of this chapter—Financial Interests of State Employees—the business of developing, producing, preparing or loading bituminous coal, subbituminous coal, anthracite, or lignite, or of reclaiming the areas upon which such activities occur.

"Coal preparation" or "coal processing" means chemical or physical processing and the cleaning, concentrating, or other processing or preparation of coal.

"Coal preparation plant" means a facility where coal is subjected to chemical or physical processing or the cleaning, concentrating, or other processing or preparation. It includes facilities associated with coal preparation activities, including but not limited to the following: loading facilities; storage and stockpile facilities; sheds, shops, and other buildings; water-treatment and water storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

"Coal processing waste" means earth materials which are separated and wasted from the product coal during cleaning, concentrating, or other processing or preparation of coal.

"Cognovit note" means an extraordinary note which authorizes an attorney to confess judgement against the person or persons signing it. It is written authority of a debtor and a direction by him for entry of a judgement against him if the obligation set forth in the note is not paid when due. Such judgement may be taken by any person holding the note, which cuts off every defense which makers of the note may otherwise have and it likewise cuts off all rights of appeal from any judgement taken on it. The note shall, at a minimum:

- (a) Contain the date of execution.
- (b) Be payable to the "Treasurer of Virginia."
- (c) Be due and payable in the event of bond forfeiture of the permit.
- (d) Be payable in a sum certain of money.
- (e) Be signed by the makers.

"Collateral bond" means an indemnity agreement in a sum certain executed by the permittee and deposited with the division supported by one or more of the following:

- (a) The deposit of cash in one or more federally insured accounts, payable only to the division upon demand;
- (b) Negotiable bonds of the United States, the Commonwealth of Virginia, or a political subdivision thereof, endorsed to the order of, and placed in the possession of the division; the bond will only be acceptable if the issue is rated "A" or better by Moody's Investor Service, Inc., or Standard and Poor's, Inc.;

(c) Certificates of deposit issued by Virginia banks payable only to the division and placed in its possession. No security in default as to principal or interest shall be acceptable as collateral; or

(d) An irrevocable letter of credit of any bank organized or authorized to transact business in the United States, payable only to the department at sight prepared in accordance with the Uniform Customs and Practices for Documentary Credits (1993 revision) International Chamber of Commerce (Publication No. 500).

"Combustible material" means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

"Community or institutional building" means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental health or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

"Compaction" means increasing the density of a material by reducing the voids between the particles and is generally accomplished by controlled placement and mechanical effort such as from repeated application of wheel, track, or roller loads from heavy equipment.

"Complete and accurate application" means an application for permit approval or approval for coal exploration where required which the division determines to contain all information required under the Act and this chapter.

"Contamination" means, in reference to ground water or surface water supplies receiving ground water, any impairment of water quality which makes the water unsuitable for a specific use.

"Control" or "controller" when used in 4VAC25-130-773, 4VAC25-130-774, or 4VAC25-130-778 means:

- (a) A permittee of a surface coal mining operation;
- (b) An operator of a surface coal mining operation; or
- (c) Any person who has the ability to determine the manner in which a surface coal mining operation is conducted.

"Cooperative agreement" means a cooperative agreement entered into in accordance with § 523(c) of the federal Act and 30 CFR Part 745.

"Cumulative impact area" means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and ground water systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond release of:

- (a) The proposed operation;
- (b) All existing operations;
- (c) Any operation for which a permit application has been submitted to the division; and

(d) All operations required to meet diligent development requirements for leased federal coal for which there is actual mine development information available.

"Department" means the Department of Mines, Minerals and Energy (DMME) of Virginia.

"Diminution" means, in reference to ground or surface water supplies receiving ground water, any impairment of water quantity which makes the water unsuitable for a specific use.

"Direct financial interest" means ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings and also means any other arrangement where the employee may benefit from his or her holding in or salary from coal mining operations. Direct financial interests include employment, pensions, creditor, real property and other financial relationships.

"Director" means the Director of the Department of Mines, Minerals, and Energy or his representative.

"Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as disturbed until reclamation is complete and the performance bond or other assurance of performance required by Subchapter VJ is released.

"Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one area to another.

"Division" means the Division of Mined Land Reclamation of the Department of Mines, Minerals, and Energy.

"Downslope" means the land surface between the projected outcrop of the lowest coal bed being mined along each highwall and a valley floor.

"Drinking, domestic or residential water supply" means water received from a well or spring and any appurtenant delivery system that provides water for direct human consumption or household use. Wells and springs that serve only agricultural, commercial or industrial enterprises are not included, except to the extent the water supply is for direct human consumption or human sanitation or domestic use.

"Embankment" means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

"Employee" means (a) any person employed by the department or other state or local government agency who performs any function or duty under the Act, and (b) consultants who perform any function or duty under the Act, if they perform decision-making functions for the department under the authority of the Act or regulations promulgated under the Act.

"Ephemeral stream" means a stream that flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and that has a channel bottom that is always above the local water table.

"Escrow account" means an account in a federally insured financial institution.

"Excess spoil" means spoil material disposed of in a location other than the mined-out area; provided that spoil material used to achieve the approximate original contour or to blend the

mined-out area with the surrounding terrain in accordance with 4VAC25-130-816.102(d) and 4VAC25-130-817.102(d) in nonsteep slope areas shall not be considered excess spoil.

"Existing structure" means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations for which construction begins prior to the approval of the state program or a federal land program, whichever occurs first.

"Extraction of coal as an incidental part" means, for the purposes of Part 707 of this chapter, the extraction of coal which is necessary to enable the construction to be accomplished. For purposes of Part 707, only that coal extracted from within the right-of-way, in the case of a road, railroad, utility line or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal outside the right-of-way or boundary of the area directly affected by the construction shall be subject to the requirements of the Act and this chapter.

"Federal Act" means the federal Surface Mining Control and Reclamation Act of 1977, as amended (Pub. L. 95-87).

"Federal land management agency" means a federal agency having administrative jurisdiction over the surface of federal lands that are subject to this chapter.

"Federal lands" means any land, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands.

"Federal lands program" means a program established by the secretary pursuant to § 523 of the federal Act to regulate surface coal mining and reclamation operations on federal lands.

"Federal lease bond" means the bond or equivalent security required by 43 CFR Part 3400 to assure compliance with the terms and conditions of a federal coal lease.

"Federal lessee protection bond" means a bond payable to the United States or the state, whichever is applicable, for use and benefit of a permittee or lessee of the surface lands to secure payment of any damages to crops or tangible improvements on federal lands, pursuant to § 715 of the federal Act.

"Federal program" means a program established by the secretary pursuant to § 504 of the federal Act to regulate coal exploration and surface coal mining and reclamation operations on nonfederal and non-Indian lands within the state in accordance with the federal Act and 30 CFR Chapter VII.

"First water producing zone" means the first water zone encountered which can be monitored in a manner which indicates the effects of a surface mining operation on usable ground water.

"Fragile lands" means areas containing natural, ecologic, scientific or aesthetic resources that could be significantly damaged by surface coal mining operations. Examples of fragile lands include valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, paleontological sites, National Natural Landmarks, areas where mining may result in flooding, environmental corridors containing a concentration of ecologic and aesthetic features and areas of recreational value due to high environmental quality.

"Fugitive dust" means that particulate matter which becomes airborne due to the forces of wind or surface coal mining and reclamation operations or both. During surface coal mining and

reclamation operations it may include emissions from haul roads; wind erosion of exposed surfaces, storage piles, and spoil piles; reclamation operations; and other activities in which material is either removed, stored, transported, or redistributed. Fugitive dust does not include particulate matter emitted from a duct or stack.

"Fund," as used in Subchapter VR, means the Abandoned Mine Reclamation Fund established pursuant to § 45.1-261 of the Act.

"General area" means, with respect to hydrology, the topographic and ground water basin surrounding a permit area and adjacent areas to include one or more watersheds containing perennial streams or ground water zones which possess useable and/or managed zones or flows, to allow an assessment of the probable cumulative impacts on the hydrologic regime.

"Government-financed construction" means construction funded 50% or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds. Funding at less than 50% may qualify if the construction is undertaken as an approved reclamation project under Title IV of the federal Act. Construction funded through government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments does not qualify as government-financed construction.

"Government financing agency" means any federal, state, regional, county, city or town unit of government, or a department, bureau, agency or office of a governmental unit or any combination of two or more governmental units or agencies, which, directly or through another unit of government, finances construction.

"Gravity discharge" means, with respect to underground coal mining activities, mine drainage that flows freely in an open channel downgradient. Mine drainage that occurs as a result of flooding a mine to the level of the discharge is not gravity discharge.

"Ground cover" means the area of ground covered by the combined aerial parts of vegetation and the litter that is produced naturally onsite, expressed as a percentage of the total area of ground.

"Ground water" means subterranean water which exists within a totally saturated zone, stratum or group of strata.

"Growing season" means the period of year when climatic conditions are favorable for plant growth, common to a place or area. The period between April 15 and October 15 is the normal growing season.

"Half-shrub" means a perennial plant with a woody base whose annually produced stems die back each year.

"Head-of-hollow fill" means a fill structure consisting of any material, except organic material, placed in the uppermost reaches of a hollow where side slopes of the existing hollow, measured at the steepest point, are greater than 20 degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than 10 degrees. In head-of-hollow fills, the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill, draining into the fill area.

"Higher or better uses" means postmining land uses that have a higher value or benefit, either economic or noneconomic, to the landowner or the community than the premining land uses.

"Highwall" means the face of exposed overburden and coal in an open cut of a surface coal

mining activity or for entry to underground mining activities.

"Highwall remnant" means that portion of highwall that remains after backfilling and grading of a remining permit area.

"Historically used for cropland" means (1) lands that have been used for cropland for any five years or more out of the 10 years immediately preceding the acquisition, including purchase, lease, or option, of the land for the purpose of conducting or allowing through resale, lease, or option the conduct of surface coal mining and reclamation operations; (2) lands that the division determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but falls outside the specific five-years-in-10 criterion, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved; or (3) lands that would likely have been used as cropland for any five out of the last 10 years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.

"Historic lands" means areas containing historic, cultural, or scientific resources. Examples of historic lands include archaeological sites, properties listed on or eligible for listing on the State or National Register of Historic Places, National Historic Landmarks, properties having religious or cultural significance to native Americans or religious groups, and properties for which historic designation is pending.

"Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage.

"Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transportation.

"Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirements of the Act in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

"Impounding structure" means a dam, embankment or other structure used to impound water, slurry, or other liquid or semi-liquid material.

"Impoundments" mean all water, sediment, slurry or other liquid or semi-liquid holding structures and depressions, either naturally formed or artificially built.

"Indemnity agreement" means an agreement between two persons in which one person agrees to pay the other person for a loss or damage. The persons involved can be individual people, or groups of people, or legal organizations, such as partnerships, corporations or government agencies, or any combination of these.

"Indirect financial interest" means the same financial relationships as for direct ownership, but

where the employee reaps the benefits of such interests, including interests held by the employee's spouse, minor child and other relatives, including in-laws, residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's functions or duties and the coal mining operation in which the spouse, minor children or other resident relatives hold a financial interest.

"In situ processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

"Intermittent stream" means:

- (a) A stream or section of a stream that drains a watershed of at least one square mile, or
- (b) A stream or section of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

"Irreparable damage to the environment" means any damage to the environment, in violation of the Act, or this chapter, that cannot be corrected by the permittee.

"Knowing" or "knowingly" means that a person who authorized, ordered, or carried out an act or omission knew or had reason to know that the act or omission would result in either a violation or failure to abate or correct a violation.

"Land use" means specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal use occur and may include land used for support facilities that are an integral part of the use. Changes of land use from one of the following categories to another shall be considered as a change to an alternative land use which is subject to approval by the division.

- (a) "Cropland." Land used for production of crops which can be grown for harvest alone or in a rotation with grasses and legumes, that include row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar crops.
- (b) "Pastureland" or land occasionally cut for hay. Land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.
- (c) "Grazingland." Lands used for grasslands and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production.
- (d) "Forestry." Land used or managed for long-term production of wood, wood fiber, or wood derived products.
- (e) "Residential." Land used for single and/or multiple family housing, mobile home parks, or other residential lodgings.
- (f) "Industrial/Commercial." Land used for:
 - (1) Extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products. This includes all heavy and light

manufacturing facilities.

(2) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

(g) "Recreation." Land used for public or private leisure-time activities, including developed recreation facilities such as parks, camps, amusement areas, as well as undeveloped areas for recreation such as hiking and canoeing.

(h) "Fish and wildlife habitat." Land dedicated wholly or partially to the production, protection, or management of species of fish or wildlife.

(i) "Developed water resources." Land used for storing water for beneficial uses, such as stockponds, irrigation, fire protection, flood control, and water supply.

(j) "Undeveloped land or no current use or land management." Land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

"Lands eligible for re-mining" means those lands that would otherwise be eligible for expenditures under § 404 or under § 402(g)(4) of the federal Act.

"Leachate" means water percolating from a surface coal mining operation which contains dissolved and suspended matter.

"Leased federal coal" means coal leased by the United States pursuant to 43 CFR Part 3400, except mineral interests in coal on Indian lands.

"Lease terms, conditions and stipulations" means all of the standard provisions of a federal coal lease, including provisions relating to lease duration, fees, rentals, royalties, lease bond, production and recordkeeping requirements, and lessee rights of assignment, extension, renewal, termination and expiration, and site-specific requirements included in federal coal leases in addition to other terms and conditions which relate to protection of the environment and of human, natural and mineral resources.

"Material damage" in the context of 4VAC25-130-784.20 and 4VAC25-130-817.121 means:

- (a) Any functional impairment of surface lands, features, structures, or facilities;
- (b) Any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or
- (c) Any significant change in the condition, appearance, or utility of any structure or facility from its presubsidence condition.

"Mineral Leasing Act" or "MLA" means the Mineral Leasing Act of 1920, as amended, 30 USC § 181 et seq.

"Mining plan" means the plan, for mining leased federal coal, required by the Mineral Leasing Act.

"Mining supervisor" means the Area Mining Supervisor, Conservation Division, U.S. Geological

Survey, or District Mining Supervisor or other subordinate acting under their direction.

"Moist bulk density" means the weight of soil (oven dry) per unit volume. Volume is measured when the soil is at field moisture capacity (1/3 bar moisture tension). Weight is determined after drying the soil at 105°C.

"MSHA" means the United States Mine Safety and Health Administration.

"Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, and provide micro-climatic conditions suitable for germination and growth.

"Natural hazard lands" means geographic areas in which natural conditions exist which pose or as a result of surface coal mining operations, may pose a threat to the health, safety or welfare of people, property or the environment, including areas subject to landslides, cave-ins, severe wind or soil erosion, frequent flooding, and areas of unstable geology.

"Net worth" means total assets less total liabilities. Total liabilities include, but are not limited to, funds pledged or otherwise obligated to the Commonwealth of Virginia, or to any other person at any time during the permit term. Total liabilities also include, but are not limited to, contingent liabilities that might materially affect the Commonwealth's ability to collect the amount of bond required in the event of bond forfeiture.

"Noncommercial building" means any building other than an occupied residential dwelling that at the time subsidence occurs is used on a regular or temporary basis as a public building or community or institutional building as those terms are defined in this section. Any building used only for commercial agricultural, industrial, retail or other commercial enterprises is excluded.

"Noxious plants" means living plants which are declared to be noxious weeds or noxious plants pursuant to the Virginia Noxious Weed Law, Chapter 17.2 (§ 3.1-296.11 et seq.) of Title 3.1 of the Code of Virginia.

"Occupied dwelling" means any building that is currently being used on a regular or temporary basis for human habitation.

"Occupied residential dwelling and structures related thereto" means, for purposes of 4VAC25-130-784.20 and 4VAC25-130-817.121, any building or other structures that, at the time the subsidence occurs, is used either temporarily, occasionally, seasonally or permanently for human habitation. This term also includes any building, structure, or facility installed on, above or below, or a combination thereof, the land surface if that building structure or facility is adjunct to or used in connection with an occupied residential dwelling. Examples of such structures include, but are not limited to, garages; storage sheds and barns; greenhouses and related buildings; utilities and cables; fences and other enclosures; retaining walls; paved or improved patios, walks and driveways; septic sewage treatment facilities; and lot drainage and lawn and garden irrigation systems. Any structure used only for commercial agriculture, industrial, retail or other commercial purposes is excluded.

"Office" or "OSM" means the Office of Surface Mining Reclamation and Enforcement established under Title II of the federal Act.

"Operator" means any person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth or from coal refuse piles by mining within 12 consecutive calendar months in any one location.

"Other treatment facilities" means any facilities for chemical treatments, such as flocculation or neutralization, or mechanical structures, such as clarifiers or precipitators, that have a point source discharge and that are utilized:

(a) To prevent additional contribution of dissolved or suspended solids to streamflow or runoff outside the permit area; or

(b) To comply with all applicable state and federal water quality laws and regulations.

"Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

"Overburden" means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

"Own," "owner," or "ownership" as used in 4VAC25-130-773, 4VAC25-140-774, or 4VAC25-140-778 (except when used in the context of ownership of real property) means being a sole proprietor or owning of record in excess of 50% of the voting securities or other instruments of ownership of an entity.

"Perennial stream" means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground-water discharge or surface runoff. The term does not include "intermittent stream" or "ephemeral stream."

"Performance bond" means a surety bond, collateral bond, or a combination thereof, by which a permittee assures faithful performance of all the requirements of the Act, this chapter, and the requirements of the permit and reclamation plan.

"Performing any function or duty under this Act" means decision or action, which if performed or not performed by an employee, affects the programs under the Act.

"Permanent diversion" means a diversion which is approved by the division and, if required, by other state and federal agencies for retention as part of the postmining land use.

"Permanent impoundment" means an impoundment which is approved by the division and, if required, by other state and federal agencies for retention as part of the postmining land use.

"Permit" means a permit to conduct surface coal mining and reclamation operations issued by the division pursuant to the Act and this chapter or by the secretary pursuant to a federal program. For the purposes of the federal lands program, permit means a permit issued by the division under a cooperative agreement or by the OSM where there is no cooperative agreement.

"Permit application package" means a proposal to conduct surface coal mining and reclamation operations on federal lands, including an application for a permit, permit revision or permit renewal, all the information required by the federal Act, 30 CFR Subchapter D, the Act and this chapter, any applicable cooperative agreement and all other applicable laws and regulations including, with respect to leased federal coal, the Mineral Leasing Act and its implementing regulations.

"Permit area" means the area of land indicated on the approved map submitted by the permittee with his application, required to be covered by the permittee's performance bond under Subchapter VJ and which shall include the area of land upon which the permittee proposes to conduct surface coal mining and reclamation operations under the permit. The permit area shall include all disturbed areas except that areas adequately bonded under another permit issued

pursuant to this chapter may be excluded from the permit area.

"Permittee" means a person holding or required by the Act or this chapter to hold a permit to conduct coal exploration (more than 250 tons) or surface coal mining and reclamation operations issued (a) by the division, (b) by the director of the OSM pursuant to a federal lands program, or (c) by the OSM and the division, where a cooperative agreement pursuant to § 45.1-230 B of the Act has been executed.

"Person" means an individual, Indian tribe when conducting surface coal mining and reclamation operations on non-Indian lands, partnership, association, society, joint venture, joint stock company, firm, company, corporation, cooperative or other business organization and any agent, unit, or instrumentality of federal, state or local government including any publicly owned utility or publicly owned corporation of federal, state or local government.

"Person having an interest which is or may be adversely affected" or "person with a valid legal interest" shall include any person:

- (a) Who uses any resources of economic, recreational, aesthetic, or environmental value that is, or may be, in fact adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the division; or
- (b) Whose property is, or may be, in fact adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the division.

The term "adversely affected" is further defined as meaning perceptibly harmed. "Aesthetics" means the consideration of that which is widely regarded to be a visibly beautiful element of a community or area.

"Piezometer" means a vertical pipe that is established in material, which is closed at the bottom, perforated from the upper limits of the material to the lower limits of the material, and which permits static water level measurements and water sampling.

"Pollution abatement area" means the part of the permit area which is causing or contributing to the baseline pollution load, which shall include adjacent and nearby areas that must be affected to bring about significant improvement of the baseline pollution load, and which may include the immediate location of the discharges.

"Pool Bond fund" means the Coal Surface Mining Reclamation Fund established pursuant to § 45.1-270.1 of the Act.

"Precipitation event" means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a limited period of time. It may be expressed in terms of recurrence interval. "Precipitation event" also includes that quantity of water coming from snow cover as snow melt in a limited period of time.

"Previously mined area" means land affected by surface coal mining operations prior to August 3, 1977, that has not been reclaimed to the standards of this chapter.

"Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 CFR Part 657 (Federal Register Vol. 4, No. 21) and which have historically been used for cropland.

"Principal shareholder" means any person who is the record or beneficial owner of 10% or more of any class of voting stock in a corporation.

"Professional geologist" means a person who is certified pursuant to Chapter 14 (§ 54.1-1400 et seq.) of Title 54.1 of the Code of Virginia.

"Prohibited financial interest" means any direct or indirect financial interest in any coal mining operation.

"Property to be mined" means both the surface property and mineral property within the permit area and the area covered by underground workings.

"Public building" means any structure that is owned or leased, and principally used, by a governmental agency for public business or meetings.

"Public office" means a facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

"Public park" means an area or portion of an area dedicated or designated by any federal, state, or local agency primarily for public recreational use, whether or not such use is limited to certain times or days, including any land leased, reserved, or held open to the public because of that use.

"Public road" means a road (i) that has been designated as a public road pursuant to the laws of the jurisdiction in which it is located; (ii) that is maintained with public funds, and is constructed, in a manner similar to other public roads of the same classification within the jurisdiction; and (iii) for which there is substantial (more than incidental) public use.

"Publicly owned park" means a public park that is owned by a federal, state or local governmental entity.

"Qualified laboratory" means a designated public agency, private firm, institution, or analytical laboratory which can prepare the required determination of probable hydrologic consequences or statement of results of test borings or core samplings or other services as specified at 4VAC25-130-795.9 under the Small Operator Assistance Program (4VAC25-130-795.1 et seq.) and which meets the standards of 4VAC25-130-795.10.

"Reasonably available spoil" means spoil and suitable coal mine waste material generated by the remaining operation or other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to public safety or significant damage to the environment.

"Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

"Reclamation" means those actions taken to restore mined land as required by this chapter to a postmining land use approved by the division.

"Recurrence interval" means the interval of time in which a precipitation event is expected to occur once, on the average. For example, the 10-year, 24-hour precipitation event would be that 24-hour precipitation event expected to occur on the average once in 10 years.

"Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity and plant species diversity that are produced naturally or by crop production methods approved by the division. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

"Refuse pile" means a surface deposit of coal mine waste that does not impound water, slurry, or other liquid or semi-liquid material.

"Regulatory program" means the Virginia Coal Surface Mining Control and Reclamation program (Chapter 19 (§ 45.1-226 et seq.) of Title 45.1 of the Code of Virginia) and rules and regulations approved by the secretary.

"Remining" means conducting surface coal mining and reclamation operations which affect previously mined areas.

"Renewable resource lands" means areas which contribute significantly to the long-range productivity of water supply or of food or fiber products, such lands to include aquifers and aquifer recharge areas.

"Replacement of water supply" means, with respect to protected water supplies contaminated, diminished or interrupted by coal mining operations, provision of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies.

(a) Upon agreement by the permittee and the water supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one-time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the permittee and the water supply owner.

(b) If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If the latter approach is selected, written concurrence must be obtained from the water supply owner.

"Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches and surface. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal hauling vehicles to and from transfer, processing, or storage areas. The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas.

"Safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

"Secretary" means the Secretary of the Interior or the secretary's representative.

"Sedimentation pond" means an impoundment used to remove solids or other pollutants from water in order to meet water quality standards or effluent limitations before the water leaves the permit area.

"Self-bond," as provided by Part 801 of this chapter, means:

(a) For an underground mining operation, a cognovit note in a sum certain payable on demand to the Treasurer of Virginia, executed by the applicant and by each individual and

business organization capable of influencing or controlling the investment or financial practices of the applicant by virtue of this authority as an officer or ownership of all or a significant part of the applicant, and supported by a certification that the applicant participating in the Pool Bond Fund has a net worth, total assets minus total liabilities equivalent to \$1 million. Such certification shall be by an independent certified public accountant in the form of an unqualified opinion.

(b) For a surface mining operation or associated facility, an indemnity agreement in a sum certain payable on demand to the Treasurer of Virginia, executed by the applicant and by each individual and business organization capable of influencing or controlling the investment or financial practices of the applicant by virtue of this authority as an officer or ownership of all or a significant part of the applicant.

"Significant forest cover" means an existing plant community consisting predominantly of trees and other woody vegetation.

"Significant, imminent environmental harm to land, air, or water resources" means:

(a) An environmental harm is an adverse impact on land, air, or water resources which resources include, but are not limited to, plants and animal life.

(b) An environmental harm is imminent, if a condition, practice, or violation exists which:

(1) Is causing such harm; or

(2) May reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under § 45.1-245 B of the Act.

(c) An environmental harm is significant if that harm is appreciable and not immediately reparable.

"Significant recreational, timber, economic, or other values incompatible with surface coal mining operations" means those values to be evaluated for their significance which could be damaged by, and are not capable of existing together with, surface coal mining operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on other affected areas. Those values to be evaluated for their importance include:

(a) Recreation, including hiking, boating, camping, skiing or other related outdoor activities;

(b) Timber management and silviculture;

(c) Agriculture, aquaculture or production of other natural, processed or manufactured products which enter commerce;

(d) Scenic, historic, archaeological, aesthetic, fish, wildlife, plants or cultural interests.

"Siltation structure" means a sedimentation pond, a series of sedimentation ponds, or other treatment facility.

"Slope" means average inclination of a surface, measured from its horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g.,

1v:5h). It may also be expressed as a percentage or in degrees.

"Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four master soil horizons are:

(a) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest;

(b) "E horizon." The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties;

(c) "B horizon." The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons; and

(d) "C horizon." The deepest layer of the soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

"Soil survey" means a field and other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the National Cooperative Soil Survey as incorporated by reference in 4VAC25-130-785.17(c)(1).

"Spoil" means overburden that has been removed during surface coal mining operations.

"Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

"Steep slope" means any slope of more than 20 degrees or such lesser slope as may be designated by the division after consideration of soil, climate, and other characteristics of a region or the state.

"Substantial legal and financial commitments in a surface coal mining operation" means significant investments, prior to January 4, 1977, have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities and other capital-intensive activities. An example would be an existing mine, not actually producing coal, but in a substantial stage of development prior to production. Costs of acquiring the coal in place or the right to mine it without an existing mine, as described in the above example, alone are not sufficient to constitute substantial legal and financial commitments.

"Substantially disturb" means, for purposes of coal exploration, to significantly impact land or water resources by blasting; by removal of vegetation, topsoil, or overburden; by construction of roads or other access routes; by placement of excavated earth or waste material on the natural land surface or by other such activities; or to remove more than 250 tons of coal.

"Successor in interest" means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

"Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary or incidental to the reclamation of such operations. This term includes the term "surface coal mining operations."

"Surface coal mining operations" means:

(a) Activities conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of § 45.1-243 of the Act, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining; the use of explosives and blasting; in situ distillation or retorting; leaching or other chemical or physical processing; and the cleaning, concentrating, or other processing or preparation of coal. Such activities also include the loading of coal for interstate commerce at or near the mine site. Provided, these activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed 16-2/3% of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to § 45.1-233 of the Act; and, provided further, that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles; and

(b) The areas upon which the activities described in paragraph (a) of this definition occur or where such activities disturb the natural land surface. These areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities and for haulage and excavation, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or material on the surface, resulting from or incident to those activities.

"Surface coal mining operations which exist on the date of enactment" means all surface coal mining operations which were being conducted on August 3, 1977.

"Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam, before recovering the coal, by auger coal mining, or by recovery of coal from a deposit that is not in its original geologic location.

"Surface operations and impacts incident to an underground coal mine" means all activities involved in or related to underground coal mining which are either conducted on the surface of the land, produce changes in the land surface or disturb the surface, air or water resources of the area, including all activities listed in § 45.1-229 L of the Act.

"Surety bond" means an indemnity agreement in a sum certain payable to the Commonwealth of

Virginia, Director—Division of Mined Land Reclamation, executed by the permittee as principal and which is supported by the performance guarantee of a corporation licensed to do business as a surety in Virginia.

"Suspended solids" or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the Environmental Protection Agency's regulations for waste water and analyses (40 CFR Part 136).

"Temporary diversion" means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and not approved by the division to remain after reclamation as part of the approved postmining land use.

"Temporary impoundment" means an impoundment used during surface coal mining and reclamation operations, but not approved by the division to remain as part of the approved postmining land use.

"Ton" means 2000 pounds avoirdupois (.90718 metric ton).

"Topsoil" means the A and E soil horizon layers of the four master soil horizons.

"Toxic-forming materials" means earth materials, or wastes which, if acted upon by air, water, weathering or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

"Toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action or physical effects is likely to kill, injure, or impair plant and animal life commonly present in the area that might be exposed to it.

"Transfer, assignment, or sale of permit rights" means a change of a permittee.

"Unanticipated event or condition," as used in 4VAC25-130-773.15, means an event or condition related to prior mining activity which arises from a surface coal mining and reclamation operation on lands eligible for remining that was not contemplated by the applicable permit.

"Underground development waste" means waste-rock mixtures of coal, shale, claystone, siltstone, sandstone, limestone, or related materials that are excavated, moved, and disposed of from underground workings in connection with underground mining activities.

"Underground mining activities" means a combination of:

- (a) Surface operations incident to underground extraction of coal or in situ processing, such as construction, use, maintenance, and reclamation of roads, aboveground repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of wastes, and areas on which materials incident to underground mining operations are placed; and
- (b) Underground operations such as underground construction, operations, and reclamation of shafts, adits, underground support facilities, in situ processing, and underground mining, hauling, storage, and blasting.

"Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of the Act or this chapter due to indifference, lack

of diligence, or lack of reasonable care, or failure to abate any violation of such permit, the Act, or this chapter due to indifference, lack of diligence, or lack of reasonable care.

"Usable ground water" or "ground water in use" means all ground water that is reasonably able to be used.

"Valid existing rights" means a set of circumstances under which a person may, subject to division approval, conduct surface coal mining operations on lands where § 45.1-252 D of the Act and 4VAC25-130-761.11 would otherwise prohibit such operations. The possession of valid existing rights only confers an exception from the prohibitions of § 45.1-252 D and 4VAC25-130-761.11. A person seeking to exercise valid existing rights must comply with all pertinent requirements of the Act and the regulations promulgated thereunder and would need to demonstrate:

(a) Except as provided in subdivision (c) of this definition, the legally binding conveyance, lease, deed, contract, or other document that vests the person or predecessor in interest with the right to conduct the type of surface coal mining operations intended. The right must exist at the time the land came under the protection of 4VAC25-130-761.11;

(b) Compliance with one of the following:

(1) That all permits and other authorizations required to conduct surface coal mining operations had been obtained or a good faith attempt to obtain all necessary permits and authorizations had been made before the land came under the protection of § 45.1-252 D or 4VAC25-130-761.11.

(2) That the land needed for and immediately adjacent to a surface coal mining operation for which all permits and other authorizations required to conduct surface coal mining operations had been obtained or a good faith attempt made to obtain such permits and authorizations occurred before the land came under the protection of § 45.1-252 D or 4VAC25-130-761.11. The person must demonstrate that prohibiting the expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of § 45.1-252 D or 4VAC25-130-761.11. Except for operations in existence before August 3, 1977, or for which a good faith effort to obtain all necessary permits had been made before August 3, 1977, this standard does not apply to lands already under the protection of § 45.1-252 D or 4VAC25-130-761.11 when the division approved the permit for the original operation or when the good faith effort to obtain all necessary permits for the original operation was made. In evaluating whether a person meets this standard, the division may consider:

(i) The extent to which coal supply contracts or other legal and business commitments that occurred before the land came under the protection of § 45.1-252 D or 4VAC25-130-761.11 depend upon the use of the land for surface coal mining operations.

(ii) The extent to which plans used to obtain financing for the operation before the land came under the protection of § 45.1-252 D or 4VAC25-130-761.11 relied upon use of that land for surface coal mining operations.

(iii) The extent to which investments in the operation made before the land came under the protection of § 45.1-252 D or 4VAC25-130-761.11 relied upon the use of that land for surface coal mining operations.

(iv) Whether the land lies within the area identified on the life-of-mine map under 4VAC25-130-779.24 (c) that was submitted before the land came under the protection of § 45.1-252 D or 4VAC25-130-761.11;

(c) For haulroads, a person who claims valid existing rights to use or construct a road across the surface of lands protected by § 45.1-252 D or 4VAC25-130-761.11 must demonstrate that one or more of the following circumstances exist. The road:

(1) Existed when the land upon which it is located came under the protection of § 45.1-252 D or 4VAC25-130-761.11 and the person has the legal right to use the road for surface coal mining operations;

(2) Was under a properly recorded right of way or easement for a road in that location at the time the land came under the protection of § 45.1-252 D or 4VAC25-130-761.11 and under the document creating the right of way or easement, and under subsequent conveyances, the person has a legal right to use or construct a road across the right of way or easement for surface coal mining operations; or

(3) Was used or contained in a valid permit that existed when the land came under the protection of § 45.1-252 D or 4VAC25-130-761.11; and

(d) That an interpretation of the terms of the document relied upon to establish the valid existing rights shall be based either upon applicable Virginia statutory or case law concerning interpretation of documents conveying mineral rights or, where no applicable state law exists, upon the usage and custom at the time and place it came into existence.

"Valley fill" means a fill structure consisting of any material, other than organic material, that is placed in a valley where side slopes of the existing valley, measured at the steepest point, are greater than 20 degrees, or where the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than 10 degrees.

"Violation," when used in the context of the permit application information or permit eligibility requirements of §§ 45.1-235 and 45.1-238 C of the Act and related regulations, means:

(a) A failure to comply with an applicable provision of a federal or state law or regulation pertaining to air or water environmental protection as evidenced by a written notification from a governmental entity to the responsible person; or

(b) A noncompliance for which the division has provided one or more of the following types of notice or OSM or a state regulatory authority has provided equivalent notice under corresponding provisions of a federal or state regulatory program:

(1) A notice of violation under 4VAC25-130-843.12;

(2) A cessation order under 4VAC25-130-843.11;

(3) A final order, bill, or demand letter pertaining to a delinquent civil penalty assessed under 4VAC25-130-845 or 4VAC25-130-846;

(4) A bill or demand letter pertaining to delinquent reclamation fees owed under 30 CFR Part 870; or

(5) A notice of bond forfeiture under 4VAC25-130-800.50 when:

(i) One or more violations upon which the forfeiture was based have not been abated or corrected; or

(ii) The amount forfeited and collected is insufficient for full reclamation under 4VAC25-130-800.50 or 4VAC-25-130-801.19, the division orders reimbursement for additional reclamation costs and the person has not complied with the reimbursement order.

"Violation, failure, or refusal," for purposes of 4VAC25-130-846, means:

(a) A failure to comply with a condition of an issued permit or the regulations implementing those sections; or

(b) A failure or refusal to comply with any order issued under 4VAC25-130-843 or any order incorporated in a final decision issued by the director, except an order incorporated in a decision issued under § 45.1-246 of the Act.

"Violation notice" means any written notification from a governmental entity of a violation of law or regulation, whether by letter, memorandum, legal or administrative pleading, or other written communication.

"Water table" means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

"Willful" or "willfully" means that a person who authorized, ordered, or carried out an act or omission that resulted in either a violation or the failure to abate or correct a violation acted:

(a) Intentionally, voluntarily, or consciously; and

(b) With intentional disregard or plain indifference to legal requirements.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 700.5, eff. December 15, 1981; amended, eff. June 28, 1982, October 28, 1982, December 14, 1982, October 11, 1983, December 27, 1983, May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 14, Issue 5, eff. December 24, 1997; Errata, 14:10 VA.R. 1750-1751 February 2, 1998; amended, Virginia Register Volume 15, Issue 6, eff. January 6, 1999; Volume 16, Issue 15, eff. May 10, 2000; Volume 20, Issue 10, eff. February 25, 2004; Volume 29, Issue 13, eff. March 27, 2013.

4VAC25-130-700.11. Applicability.

- (a) Except as provided in Paragraph (b) of this section, this chapter applies to all coal exploration and surface coal mining and reclamation operations, except--
- (1) The extraction of coal by a landowner for his own non-commercial use from land owned or leased by him. Non-commercial use does not include the extraction of coal by one unit of an integrated company or other business or non-profit entity which uses the coal in its own manufacturing or power plants;
 - (2) The extraction of 250 tons of coal or less by a person conducting a surface coal mining and reclamation operation. A person who intends to remove more than 250 tons is not exempted;
 - (3) The extraction of coal as an incidental part of Federal, State or local government-financed highway or other construction in accordance with Part 707;
 - (4) The extraction of coal incidental to the extraction of other minerals where coal does not exceed $16\frac{2}{3}$ percent of the total tonnage of coal and other minerals removed for purposes of commercial use or sale in accordance with Part 702.
- (b) The division may on its own initiative and shall, within a reasonable time of a request from any person who intends to conduct surface coal mining operations, make a written determination whether the operation is exempt under this section. The division shall give reasonable notice of the request to interested persons. Prior to the time a determination is made, any person may submit, and the division shall consider, any written information relevant to the determination. A person requesting that an operation be declared exempt shall have the burden of establishing the exemption. If a written determination of exemption is reversed through subsequent administrative or judicial action, any person who, in good faith, has made a complete and accurate request for an exemption and relied upon the determination, shall not be cited for violations which occurred prior to the date of the reversal.
- (c)(1) The division may terminate its jurisdiction under the regulatory program over the reclaimed site of a completed surface coal mining and reclamation operation, or increment thereof, when:
- (i) The division determines in writing that under the initial program, all requirements imposed under Chapter 17 (§ 45.1-198 et seq.) of Title 45.1 of the Code of Virginia have been successfully completed; or
 - (ii) The division determines in writing that under the permanent program, all requirements imposed under Chapter 19 (§ 45.1-226 et seq.) of Title 45.1 of the Code of Virginia have been successfully completed or, where a performance bond was required, the division has made a final decision in accordance with Part 800 or 801 of this chapter to release the performance bond fully.
- (2) Following a termination under Paragraph (d)(1) of this section, the division shall reassert jurisdiction under this chapter over a site if it is demonstrated that the bond release or written determination referred to in Paragraph (d)(1) of this section was based upon fraud, collusion, or misrepresentation of a material fact.

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 700.11, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-700.12. Petitions to initiate rule making.

(a) Any person may petition to initiate a proceeding for the issuance, amendment, or repeal of any regulation under the Act. The petition shall be addressed to either the director of the division or the director of the department and mailed or submitted to the division office at Big Stone Gap.

(b) The petition shall be a concise statement of the facts, technical justification, and law which requires issuance, amendment, or repeal of a regulation under the Act and shall indicate whether the petitioner desires a public hearing.

(c) Upon receipt of the petition, the division shall make a preliminary determination whether the petition sets forth facts, technical justification and law which may provide a reasonable basis for issuance, amendment or repeal of a regulation. Facts, technical justification or law previously considered in a petition or rule making on the same issue shall not provide a reasonable basis. The division shall send the preliminary determination to the director, who may hold a public hearing, conduct an investigation or take other action to determine whether the petition should be granted.

(d) Within 90 days of receipt of the petition, the director shall issue a written decision to either grant or deny the petition.

(e) If the director grants the petition, he shall initiate a rule making proceeding pursuant to the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). If the director denies the petition, he shall notify the petitioner in writing, setting forth the reasons for the denial.

(f) Nothing herein shall be construed as preventing the director from initiating any rule making proceeding on his own motion.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 700.12, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 23, Issue 13, eff. April 4, 2007.

4VAC25-130-700.14. Availability of records.

(a) Records required by the Act to be made available to the public shall be retained at the division office in Big Stone Gap.

(b) Requests for other documents or records in the possession of the division should be made in accordance with the Virginia Freedom of Information Act, Chapter 21, Title 2.1, Code of Virginia, (1950), as amended.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 700.14, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-700.15. Computation of time.

(a) Except as otherwise provided, computation of time under this chapter is based on calendar days.

(b) In computing any period of prescribed time, the day on which the designated period of time begins is not included. The last day of the period is included unless it is a Saturday, Sunday or legal holiday on which the division is not open for business, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday.

(c) Intermediate Saturdays, Sundays, and legal holidays are excluded from the computation when the period of prescribed time is 7 days or less.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 700.15, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

Part 701

Permanent Regulatory Program Applicability

4VAC25-130-701.11. Applicability.

(a) Any person who conducts surface coal mining operations on non-Indian or non-Federal lands within the Commonwealth of Virginia shall have a permit issued pursuant to requirements of Chapter 19 (§ 45.1-226 et seq.) of Title 45.1 of the Code of Virginia.

(b) Any person who conducts surface coal mining operations on Federal lands located within the Commonwealth of Virginia shall have a permit issued pursuant to Part 740.

(c) The requirements of Subchapter VK shall be effective and shall apply to each surface coal mining and reclamation operation for which the surface coal mining operation is required to obtain a permit under the Act, on the earliest date upon which the Act and this chapter require a

permit to be obtained, except as provided in Paragraph (d) of this section.

(d)(1) Each structure used in connection with or to facilitate a coal exploration or surface coal mining and reclamation operation shall comply with the performance standards and the design requirements of Subchapter VK, except that--

(i) An existing structure which meets the performance standards of Subchapter VK but does not meet the design requirements of Subchapter VK may be exempted from meeting those design requirements by the division. The division may grant this exemption only as part of the permit application process after obtaining the information required by 4VAC25-130-780.12 or 4VAC25-130-784.12 and after making the findings required in 4VAC25-130-773.15.

(ii) If the performance standard of Subchapter B of 30 CFR Chapter VII is at least as stringent as the comparable performance standard of Subchapter VK, an existing structure which meets the performance standards of Subchapter B of 30 CFR Chapter VII may be exempted by the division from meeting the design requirements of Subchapter VK. The division may grant this exemption only as part of the permit application process after obtaining the information required by 4VAC25-130-780.12 or 4VAC25-30-784.12 and after making the findings required in 4VAC25-130-773.15.

(iii) An existing structure which meets a performance standard of Subchapter B of 30 CFR Chapter VII which is less stringent than the comparable performance standards of Subchapter VK or which does not meet a performance standard of Subchapter VK, for which there was no equivalent performance standards in Subchapter B of 30 CFR Chapter VII, shall be modified or reconstructed to meet the performance and design standards of Subchapter VK pursuant to a compliance plan approved by the division only as part of the permit application as required in 4VAC25-130-780.12 or 4VAC25-130-784.12 and according to the findings required by 4VAC25-130-773.15.

(iv) An existing structure which does not meet the performance standards of Subchapter B of 30 CFR Chapter VII and which the applicant proposes to use in connection with or to facilitate the coal exploration or surface coal mining and reclamation operation shall be modified or reconstructed to meet the performance and design standards of Subchapter VK prior to issuance of the permit.

(2) The exemptions provided in Paragraphs (d)(1)(i) and (d)(1)(ii) of this section shall not apply to -

(i) The requirements for existing and new coal mine waste disposal facilities; and

(ii) The requirements to restore the approximate original contour of the land.

(e)(1) Any person conducting coal exploration on non-Federal and non-Indian lands shall either file a notice of intention to explore or obtain approval of the division, as required by Part 772.

(2) Coal exploration performance standards in Part 815 shall apply to coal exploration on non-Federal and non-Indian lands which substantially disturbs the natural land surface.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 701.11, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

Part 702

Exemption for Coal Extraction Incidental to the Extraction of Other Minerals

4VAC25-130-702.5. Definitions.

As used in this Part, the following terms have the meanings specified, except where otherwise indicated:

- (a) Cumulative measurement period means the period of time over which both cumulative production and cumulative revenue are measured.
- (1) For purposes of determining the beginning of the cumulative measurement period, subject to the division's approval, the operator must select and consistently use one of the following:
- (i) For mining areas where coal or other minerals were extracted prior to August 3, 1977, the date extraction of coal or other minerals commenced at that mining area or August 3, 1977, or
 - (ii) For mining areas where extraction of coal or other minerals commenced on or after August 3, 1977, the date extraction of coal or other minerals commenced at that mining area, whichever is earlier.
- (2) For annual reporting purposes pursuant to 4VAC25-130-702.18, the end of the period for which cumulative production and revenue is calculated is either
- (i) For mining areas where coal or other minerals were extracted prior to the effective date of this Part, the last date of the calendar quarter during which this Part became effective, and each anniversary of that day thereafter; or
 - (ii) For mining areas where extraction of coal or other minerals commenced on or after the effective date of this Part, the last day of the calendar quarter during which coal extraction commenced, and each anniversary of that day thereafter.
- (b) Cumulative production means the total tonnage of coal or other minerals extracted from a mining area during the cumulative measurement period. The inclusion of stockpiled coal and other mineral tonnages in this total is governed by 4VAC25-130-702.16.
- (c) Cumulative revenue means the total revenue derived from the sale of coal or other minerals and the fair market value of coal or other minerals transferred or used, but not sold, during the cumulative measurement period.
- (d) Mining area means an individual excavation site or pit from which coal, other minerals and overburden are removed.

(e) Other minerals means any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste and fill material.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 702.5, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-702.11. Application requirements and procedures.

(a)(1) Any person who plans to commence or continue coal extraction after the effective date of this Part, in reliance on the incidental mining exemption shall file a complete application for exemption with the division for each mining area.

(2) A person may not commence coal extraction based upon the exemption until the division approves such application, except as provided in Paragraph (e)(3) of this section.

(b) Existing operations. Any person who has commenced coal extraction at a mining area in reliance upon the incidental mining exemption prior to the effective date of the incidental mining provisions in this chapter may continue mining operations for 60 days after such effective date. Coal extraction may not continue after such 60-day period unless that person files an administratively complete application for exemption with the division. If an administratively complete application is filed within 60 days, the person may continue extracting coal in reliance on the exemption beyond the 60-day period until the division makes an administrative decision on such application.

(c) Additional information. The division shall notify the applicant if the application for exemption is incomplete and may at any time require submittal of additional information.

(d) Public comment period. Following publication of the newspaper notice required by 4VAC25-130-702.12(g), the division shall provide a period of no less than 30 days during which time any person having an interest which is or may be adversely affected by a decision on the application may submit written comments or objections.

(e) Exemption determination.

(1) No later than 90 days after filing of an administratively complete application, the division shall make a written determination whether, and under what conditions, the persons claiming the exemption are exempt under this Part, and shall notify the applicant and persons submitting comments on the application of the determination and the basis for the determination.

(2) The determination of exemption shall be based upon information contained in the application and any other information available to the division at that time.

(3) If the division fails to provide an applicant with the determination as specified in Paragraph (e)(1) of the section, an applicant who has not begun may commence coal

extraction pending a determination on the application unless the division issues an interim finding, together with reasons therefor, that the applicant may not begin coal extraction.

(f) Administrative review.

(1) Any adversely affected person may request administrative review of a determination under Paragraph (e) of this section within 30 days of the notification of such determination in accordance with procedures established under section 45.1-250 of the Code of Virginia.

(2) A petition for administrative review filed under section 45.1-250 of the Code of Virginia shall not suspend the effect of a determination under Paragraph (e) of this section.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 702.11, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-702.12. Contents of application for exemption.

An application for exemption shall include at a minimum:

- (a) The name and address of the applicant;
- (b) A list of the minerals sought to be extracted;
- (c) Estimates of annual production of coal and the other minerals within each mining area over the anticipated life of the mining operation;
- (d) Estimated annual revenues to be derived from bona fide sales of coal and other minerals to be extracted within the mining area;
- (e) Where coal or the other minerals are to be used rather than sold, estimated annual fair market values at the time of projected use of the coal and other minerals to be extracted from the mining area;
- (f) The basis for all annual production, revenue, and fair market value estimates;
- (g) A description, including county, and boundaries of the land, of sufficient certainty that the mining areas may be located and distinguished from other mining areas;
- (h) An estimate to the nearest acre of the number of acres that will compose the mining area over the anticipated life of the mining operation;
- (i) Evidence of publication, in a newspaper of general circulation in the county of the mining area, of a public notice that an application for exemption has been filed with the division (The public notice must identify the persons claiming the exemption and must contain a description of the proposed operation and its locality that is sufficient for interested persons to identify the operation.);
- (j) Representative stratigraphic cross-section(s) based on test borings or other information

identifying and showing the relative position, approximate thickness and density of the coal and each other mineral to be extracted for commercial use or sale and the relative position and thickness of any material, not classified as other minerals, that will also be extracted during the conduct of mining activities;

(k) A map of appropriate scale which clearly identifies the mining area;

(l) A general description of mining and mineral processing activities for the mining area;

(m) A summary of sales commitments and agreements for future delivery, if any, which the applicant has received for other minerals to be extracted from the mining area, or a description of potential markets for such minerals;

(n) If the other minerals are to be commercially used by the applicant, a description specifying the use;

(o) For operations having extracted coal or other minerals prior to filing an application for exemption, in addition to the information required above, the following information must also be submitted:

(1) Any relevant documents the operator has received from the division documenting its exemption from the requirements of the Act;

(2) The cumulative production of the coal and other minerals from the mining area; and

(3) Estimated tonnages of stockpiled coal and other minerals; and

(p) Any other information pertinent to the qualification of the operation as exempt.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 702.12, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-702.13. Public availability of information.

(a) Except as provided in Paragraph (b) of this section, all information submitted to the division under this Part shall be made immediately available for public inspection and copying at the offices of the division until at least three years after expiration of the period during which the subject mining area is active.

(b) The division may keep information submitted under this Part confidential if the person submitting it requests in writing, at the time of submission, that it be kept confidential and the information concerns trade secrets or is privileged commercial or financial information of the persons intending to conduct operations under this Part.

(c) Information requested to be held as confidential under Paragraph (b) of this section shall not be made publicly available until after notice and opportunity to be heard is afforded persons both seeking and opposing disclosure of the information.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 702.13, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-702.14. Requirements for exemption.

(a) Activities are exempt from the requirements of this chapter if all of the following are satisfied:

- (1) The cumulative production of coal extracted from the mining area determined annually as described in this Paragraph does not exceed $16\frac{2}{3}$ percent of the total cumulative production of coal and other minerals removed during such period for purposes of bona fide sale or reasonable commercial use.
- (2) Coal is produced from a geological stratum lying above or immediately below the deepest stratum from which other minerals are extracted for purposes of bona fide sale or reasonable commercial use.
- (3) The cumulative revenue derived from the coal extracted from the mining area determined annually shall not exceed 50 percent of the total cumulative revenue derived from the coal and other minerals removed for purposes of bona fide sale or reasonable commercial use. If the coal extracted or the minerals removed are used by the operator or transferred to a related entity for use instead of being sold in a bona fide sale, then the fair market value of the coal or other minerals shall be calculated at the time of use or transfer and shall be considered rather than revenue.

(b) Persons seeking or that have obtained an exemption from the requirements of this chapter shall comply with the following:

- (1) Each other mineral upon which an exemption under this Part is based must be a commercially valuable mineral for which a market exists or which is mined in bona fide anticipation that a market will exist for the mineral in the reasonably foreseeable future, not to exceed twelve months from the end of the current period for which cumulative production is calculated. A legally binding agreement for the future sale of other minerals is sufficient to demonstrate the above standard.
- (2) If either coal or other minerals are transferred or sold by the operator to a related entity for its use or sale, the transaction must be made for legitimate business purposes.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 702.14, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-702.15. Conditions of exemption and right of inspection and entry.

A person conducting activities covered by this Part shall:

- (a) Maintain on-site or at other locations available to authorized representatives of the Division and the Secretary information necessary to verify the exemption including, but not limited to, commercial use and sales information, extraction tonnages, and a copy of the exemption application and exemption approved by the division;
- (b) Notify the division upon the completion of the mining operation or permanent cessation of all coal extraction activities; and
- (c) Conduct operations in accordance with the approved application or when authorized to extract coal under 4VAC25-130-702.11(b) or 4VAC25-130-702.11(e)(3) prior to submittal or approval of an exemption application in accordance with the provisions of this chapter.
- (d) Authorized representatives of the Division and the Secretary shall have the right to conduct inspections of operations claiming exemption under this Part.
- (e) Each authorized representative of the Division and the Secretary conducting an inspection under this Part:
 - (1) Shall have a right of entry to, upon, and through any mining and reclamation operations without advance notice or a search warrant, upon presentation of appropriate credentials;
 - (2) May, at reasonable times and without delay, have access to and copy any records relevant to the exemption; and
 - (3) Shall have a right to gather physical and photographic evidence to document conditions, practices or violations at a site.
- (f) No search warrant shall be required with respect to any activity under Paragraphs (d) and (e) of this section, except that a search warrant may be required for entry into a building.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 702.15, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-702.16. Stockpiling of minerals.

(a) Coal. Coal extracted and stockpiled may be excluded from the calculation of cumulative production until the time of its sale, transfer to a related entity or use:

(1) Up to an amount equaling a 12-month supply of the coal required for future sale, transfer or use as calculated based upon the average annual sales, transfer and use from the mining area over the two preceding years; or

(2) For a mining area where coal has been extracted for a period of less than two years, up to an amount that would represent a 12-month supply of the coal required for future sales, transfer or use as calculated based on the average amount of coal sold, transferred or used each month.

(b) Other minerals.

(1) The division shall disallow all or part of an operator's tonnages of stockpiled other minerals for purposes of meeting the requirements of this Part if the operator fails to maintain adequate and verifiable records of the mining area of origin, the disposition of stockpiles or if the disposition of the stockpiles indicates the lack of commercial use or market for the minerals.

(2) The division may only allow an operator to utilize tonnages of stockpiled other minerals for purposes of meeting the requirements of this Part if:

(i) The stockpiling is necessary to meet market conditions or is consistent with generally accepted industry practices; and

(ii) Except as provided in Paragraph (b)(3) of this section, the stockpiled other minerals do not exceed a 12-month supply of the mineral required for future sales as approved by the division on the basis of the exemption application.

(3) The division may allow an operator to utilize tonnages of stockpiled other minerals beyond the 12-month limit established in Paragraph (b)(2) of this section if the operator can demonstrate to the division's satisfaction that the additional tonnage is required to meet future business obligations of the operator, such as may be demonstrated by a legally binding agreement for future delivery of the minerals.

(4) The division may periodically revise the other mineral stockpile tonnage limits in accordance with the criteria established by Paragraphs (b)(2) and (3) of this section based on additional information available to the division.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 702.16, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-702.17. Revocation and enforcement.

- (a) The division shall conduct an annual compliance review of the mining area, utilizing the annual report submitted pursuant to 4VAC25-130-702.18, an on-site inspection and any other information available to the division.
- (b) If the division has reason to believe that a specific mining area was not exempt under the provision of this Part at the end of the previous reporting period, is not exempt, or will be unable to satisfy the exemption criteria at the end of the current reporting period, the division shall notify the operator that the exemption may be revoked and the reason(s) therefore. The exemption will be revoked unless the operator demonstrates to the division within 30 days that the mining area in question should continue to be exempt.
- (c)(1) If the division finds that an operator has not demonstrated that activities conducted in the mining area qualify for the exemption, the division shall revoke the exemption and immediately notify the operator and intervenors. If a decision is made not to revoke an exemption, the division shall immediately notify the operator and intervenors.
- (2) Any adversely affected person may request administrative review of a decision whether to revoke an exemption within 30 days of the notification of such decision in accordance with procedures established under section 45.1-250 of the Code of Virginia.
- (3) A petition for administrative review filed under section 45.1-250 of the Code of Virginia shall not suspend the effect of a decision whether to revoke an exemption.
- (d)(1) An operator mining in accordance with the terms of an approved exemption shall not be cited for violations of this chapter which occurred prior to the revocation of the exemption.
- (2) An operator who does not conduct activities in accordance with the terms of an approved exemption and knows or should know such activities are not in accordance with the approved exemption shall be subject to direct enforcement action for violations of this chapter which occur during the period of such activities.
- (3) Upon revocation of an exemption or denial of an exemption application, an operator shall stop conducting surface coal mining operations until a permit is obtained and shall comply with the reclamation standards of this chapter with regard to conditions, areas and activities existing at the time of revocation or denial.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 702.17, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-702.18. Reporting requirements.

- (a)(1) Following approval by the division of an exemption for a mining area, the person receiving the exemption shall, for each mining area, file a written report annually with the division

containing the information specified in Paragraph (b) of this section.

(2) The report shall be filed no later than 30 days after the end of the 12-month period as determined in accordance with the definition of "cumulative measurement period" in 4VAC25-130-702.5.

(3) The information in the report shall cover:

(i) Annual production of coal and other minerals and annual revenue derived from coal and other minerals during the preceding 12-month period, and

(ii) The cumulative production of coal and other minerals and the cumulative revenue derived from coal and other minerals.

(b) For each period and mining area covered by the report, the report shall specify:

(1) The number of tons of extracted coal sold in bona fide sales and total revenue derived from such sales;

(2) The number of tons of coal extracted and used or transferred by the operator or related entity and the estimated total fair market value of such coal;

(3) The number of tons of coal stockpiled;

(4) The number of tons of other commercially valuable minerals extracted and sold in bona fide sales and total revenue derived from such sales;

(5) The number of tons of other commercially valuable minerals extracted and used or transferred by the operator or related entity and the estimated total fair market value of such minerals; and

(6) The number of tons of other commercially valuable minerals removed and stockpiled by the operator.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 702.18, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

Part 705

Restrictions on Financial Interests of State Employees

4VAC25-130-705.4. Responsibility.

(a) The Director shall:

(1) Provide advice, assistance, and guidance to all State employees required to file statements pursuant to 4VAC25-130-705.11;

- (2) Inform annually each State employee required to file a statement with the Director of the name, address, and telephone number of the person who may be contacted for advice and counseling;
 - (3) Furnish a blank statement 45 days in advance of the filing date established by 4VAC25-130-705.13(a) to each State employee required to file a statement;
 - (4) Promptly review the statement of employment and financial interest and supplements, if any, filed by each employee, to determine if the employee has correctly identified those listed employment and financial interests which constitute a direct or indirect financial interest in an underground or surface coal mining operation;
 - (5) Resolve prohibited financial interest situations by ordering or initiating remedial action or by reporting the violation to the Director of the OSM;
 - (6) Certify on each statement that review has been made, that prohibited financial interests, if any, have been resolved, and that no other prohibited interests have been identified from the statement;
 - (7) Submit to the Director of the OSM such statistics and information as the Director of the OSM may request to enable the preparation of the required annual report to Congress;
 - (8) Submit to the Director of the OSM, the initial listing and the subsequent annual listing of positions as required by 4VAC25-130-705.11(b), (c), and (d).
- (b) Employees performing any duties or functions under the Act shall:
- (1) Have no direct or indirect financial interest in coal mining operations;
 - (2) File a fully completed statement of employment and financial interest annually on the specified filing date; and
 - (3) Comply with directives from persons responsible for approving statements or ordering remedial action.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 705.4, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-705.11. Who shall file.

(a) Any employee who performs any function or duty under the Act is required to file a statement of employment and financial interests. An employee who occupies a position which has been determined by the Director not to involve performance of any function or duty under the Act or who is no longer employed by the Department at the time a filing is due, is not required to file a

statement.

(b) The Director shall prepare:

(1) A list of those divisions, offices and sections within the Department which do not perform any functions or duties under the Act; and

(2) A list of the positions not performing functions or duties under the Act for only those divisions, offices and sections that do have employees performing functions or duties under the Act.

(c) Only those employees who are employed in a listed division office or section, or who occupy a listed position will be exempted from the filing requirements of these regulations.

(d) The Director shall submit these lists to the Director of the OSM, together with written justification for inclusion of the positions and the organizations listed.

(e) The Director shall review and update these lists annually. The Director may revise these lists by the addition or deletion of positions and organizations at any time he determines such revisions are required to carry out the purposes of the Act or these regulations. Proposed revisions or certification that revision is not required shall be submitted to the Director of the OSM no later than September 30 of each year. Additions to and deletions from the list of positions are effective upon notification to the incumbents of the positions added or deleted.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 705.11, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-705.13. When to file.

(a) Employees performing functions or duties under the Act shall file annually on February 1 of each year or at such other date as may be specified by the Director with the concurrence of the OSM.

(b) New employees hired, appointed, or transferred to perform functions or duties under the Act will be required to file at the time of entrance to duty.

(c) New employees are not required to file an annual statement on the subsequent annual filing date if this date occurs within two months after their initial statement was filed.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 705.13, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982;

December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-705.15. Where to file.

The Director shall file his statement with the OSM. All other employees, as provided in 4VAC25-130-705.11, shall file their statement with the Director.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 705.15, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-705.17. What to report.

(a) General. Each employee shall report all information required on the statement of employment and financial interests for the employee, the employee's spouse, minor children or other relatives who are full-time residents of the employee's home. The report shall be on OSM form 705-1 provided by the OSM. The statement consists of three major parts, (1) a listing of all financial interests, including employment, security, real property, creditor and other financial interests held during the course of the preceding year, (2) a certification that none of the listed financial interests represent a direct or indirect financial interest in an underground or surface coal mining operation except as specifically identified and described by the employee as part of the certificate, and (3) a certification by the reviewer that the form was reviewed, that prohibited interests have been resolved, and that no other prohibited interests have been identified from the statement.

(b) Listing of all financial interest. The statement will set forth the following information regarding any financial interest:

(1) "Employment." Any continuing financial interests in business entities and non-profit organizations through a pension or retirement plan, shared income, salary or other income arrangement as a result of prior or current employment. Pension or retirement plans with a guaranteed income need not be reported. A guaranteed income is one which is unlikely to be changed as a result of actions taken by the division.

(2) "Securities." Any financial interest in business entities and non-profit organizations through ownership of stock, stock options, bonds, securities or other arrangements including trusts. An employee is not required to report holdings in widely diversified mutual funds, investment clubs or regulated investment companies not specializing in underground and surface coal mining operations.

(3) "Real Property." Ownership, lease, royalty or other interests or rights in lands or minerals.

Employees are not required to report lands developed and occupied for a personal residence.

(4) "Creditors." Debts owed to business entities and non-profit organizations. Employees are not required to report debts owed to financial institutions (banks, savings and loan associations, credit unions, and the like) which are chartered to provide commercial or personal credit. Also excluded are charge accounts and similar short term debts for current and ordinary household and living expenses.

(c) Employee certification, and, if applicable, a listing of exceptions.

(1) The statement will provide for a signed certification by the employee that to the best of his knowledge, (i) none of the listed financial interests represent an interest in an underground or surface coal mining operation except as specifically identified and described as exceptions by the employee as part of the certificate, and (ii) the information shown on the statement is true, correct, and complete.

(2) An employee is expected to have complete knowledge (i) of personal involvement in business enterprises such as a sole proprietorship and partnership, his outside employment and the outside employment of the spouse and other covered relatives, and (ii) of other corporate or business reports routinely circulated to investors or routinely made available to the public.

(3) The exceptions shown in the employee certification of the form must provide enough information for the Director to determine the existence of a direct or indirect financial interest. Accordingly, the exceptions should:

(i) List the financial interests;

(ii) Show the number of shares, estimated value or annual income of the financial interests; and

(iii) Include any other information which the employee believes should be considered in determining whether or not the interest represents a prohibited interest.

(4) Employees are cautioned to give serious consideration to their direct and indirect financial interests before signing the statement of certification. Signing the certification without listing known prohibited financial interests may be cause for imposing the penalties prescribed by law.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 705.17, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-705.19. Resolving prohibited interests.

(a)(1) If an employee has a prohibited financial interest, the Director shall promptly notify the employee in writing, that remedial action which will resolve the prohibited interest is required within 90 days.

(2) Remedial action may include:

- (i) Reassignment of the employee to a position which performs no function or duty under the Act, or
- (ii) Divestiture of the prohibited financial interest, or
- (iii) Other appropriate action which either eliminates the prohibited interest or eliminates the situation which creates the conflict.

(3) If 90 days after an employee is notified to take remedial action that employee is not in compliance with the requirements of the Act and these regulations, the Director shall report the facts of the situation to the Director of the OSM, who, pursuant to Federal regulations is required to determine whether action to impose penalties prescribed under section 517(g) of the Federal Act should be initiated. The report to the Director of the OSM shall include the original or a certified true copy of the employee's statement and any other information pertinent to the determination, including a statement of action being taken at the time the report is made.

(b)(1) If it is determined that the Director has a prohibited financial interest, the Director will comply with remedial action recommended by the OSM within 90 days of notification from the Governor or other State official chosen by the OSM to give notification of such recommended remedial action.

(2) Remedial action should be consistent with the procedures prescribed for other State employees by 4VAC25-130-705.19(a)(2).

(c) The Director shall take steps to assure that employees are notified of additional remedial action to be taken pursuant to recommendations from the OSM and that such actions are carried out.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 705.19, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-705.21. Appeals procedures.

(a) Employees shall have the right to appeal a notification for remedial action under 4VAC25-130-705.19 and shall have 30 days to exercise this right before remedial action is initiated.

(b) An appeal shall be in writing on a standard State grievance form, which shall be submitted in accordance with the procedure specified in Part B of the First Step (Supervisor level) of the State Grievance Procedure. The appeal shall proceed as a grievance in accordance with the State Grievance Procedure, which shall apply for the purposes of appeal under this section to all employees including managerial employees, except agency heads and probationary employees. Nothing in the State Grievance Procedure, however, shall prevent the Director from reporting on the situation to the OSM, nor preclude the OSM from taking its own action against employees.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 705.21, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-705.22. Penalties for failure to file disclosure statements.

Any employee who fails to file the disclosure statement required under 4VAC25-130-705.17 will be subject to removal from his position, and dismissal from the Department.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 705.22, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-705.23. Other state and local government agencies.

(a) The head of each State or local government agency which performs any function or duty under the Act, pursuant to a memorandum of agreement with the Department, or other authorization, shall, prior to such agency commencing functions or duties under the Act, prepare a list of positions within the agency which perform, or will perform, functions or duties under the Act, and shall submit this list to the Director and shall certify that the list contains all positions within the agency which will be performing functions or duties under the Act.

(b) Each employee who occupies a position listed pursuant to Subsection (a) of this section, shall, prior to commencing any function or duty under the Act, complete a statement of employment and financial interest in accordance with 4VAC25-130-705.17 and shall file the statement with the head of the employee's agency. Each such employee shall also complete and file a statement annually, in accordance with 4VAC25-130-705.13.

(c) The head of each State or local agency having positions listed pursuant to Subsection (a) of

this section shall be responsible for insuring that each employee who occupies a listed position within the agency receives a form for the statement of employment and financial interest, and that the employee completes the statement. The head of the agency shall collect all completed statements and shall submit them to the Director and shall certify that all employees occupying listed positions have completed and filed the required statement.

(d) The Director shall review the statements and if he finds that there are prohibited financial interests, he shall notify the head of the agency of the employee having the prohibited financial interest. The head of the agency shall promptly notify the employee and take action in accordance with 4VAC25-130-705.19 to resolve the prohibited interest within 90 days of notification to the employee. The head of the agency shall report the result of such actions to the Director. If the employee is not in compliance by the end of the 90-day period, then the Director shall report the facts of the situation to the OSM, and shall take such other steps, including termination or modification of any memorandum of agreement as he deems appropriate.

(e) Members of boards or commissions of other State or local government agencies which perform functions or duties under the Act shall complete and file a statement of employment and financial interest, if such members perform duties or functions under the Act, such as, but not limited to, the adoption of regulations, the issuances of certificates or permits, and the determination of contested cases.

(f) The phrase "performing any function or duty under the Act" as used in this section, shall be construed to mean those functions or duties under the Act which would have been performed by employees of the Department in the absence of a memorandum of agreement between the Department and another State or local government agency or similar authorization.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 705.23, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-705.24. Confidentiality and access to disclosure statements.

(a) The provisions of the Privacy Protection Act of 1976 (Chapter 26 (§ 2.1-377 et seq.) of Title 2.1 of the Code of Virginia shall apply to statements and information obtained pursuant to these regulations.

(b) All statements of employment and financial interest which are filed pursuant to these regulations, and the information shown thereon, shall be maintained only for the purposes of determining whether there are any direct or indirect financial interests in violation of Section 45.1-231 of the Act, and Section 517(g) of the Federal Act. No other use is authorized.

(c) Access to such statements and information shall be restricted to personnel of the Department and of the U.S. Department of the Interior, and State and Federal enforcement authorities (including the U.S. Justice Department) for the purposes for which the information was collected.

Access among personnel of the Department shall be further restricted to only those persons specified by the Director as having regular access to the statements and information.

(d) All such statements and information shall be maintained separate and apart from personnel records and other records to which the public could have access.

(e) The filing and information system where such statements and information are stored shall be identified as restricted access and secured against unauthorized access. The Director shall designate a custodian for records maintained in the Division's Office in Big Stone Gap, and another custodian for records maintained in the Department's Offices in Richmond. The duties of these custodians shall be to maintain restricted access and security for their respective records.

(f) Whenever any employee ceases to occupy a listed position which requires the filing of a statement of employment and financial interest, all such statements then on file from such employee shall be returned to the employee and all information systems purged of the data provided by such statements upon request of the employee. In addition, the custodian of the records where such statements are maintained shall periodically update the records by purging them of statements and information pertaining to employees who no longer occupy listed positions.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 705.24, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-705.25. Gifts and gratuities.

(a) Except as provided in Paragraph (b) of this section, employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or other similar item of monetary value, from a coal company which:

- (1) Conducts or is seeking to conduct, operations or activities that are regulated under the Act; or
- (2) Has interests that may be substantially affected by the performance or non-performance of the employee's official duty.

(b) The prohibitions in Paragraph (a) of this section do not apply in the context of obvious family or personal relationships, such as those between the parents, children, or spouse of the employee and the employee, when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors. An employee may accept:

- (1) Food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon, dinner, or other meeting where an employee may properly be in attendance; and

(2) Unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars and other items of nominal value.

(c) Any employee who violates the provisions of this section shall be subject to dismissal, demotion or suspension from his position of employment, and to such fines and punishments as may be provided by law. An employee may appeal a dismissal, demotion or suspension under this Subsection in accordance with the State Grievance Procedure.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 705.25, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

Part 707

Exemption for Coal Extraction Incident to Government-Financed Highway Or Other Construction

4VAC25-130-707.11. Applicability.

(a) Extraction of coal which is an incidental part of government-financed construction is exempt from the Act and this chapter.

(b) Any person who conducts or intends to conduct coal extraction which does not satisfy Paragraph (a) of this section shall not proceed until a permit has been obtained from the division.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 707.11, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-707.12. Information to be maintained on site.

Any person extracting coal incident to government-financed highway or other construction who extracts more than 250 tons of coal or affects more than two acres shall maintain, on the site of the extraction operation and available for inspection, documents which show--

(a) A description of the construction project;

(b) The exact location of the construction, right-of-way or the boundaries of the area which will be directly affected by the construction; and

(c) The government agency which is providing the financing and the kind and amount of public financing, including the percentage of the entire construction costs represented by the government financing.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 707.12, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

Part 740

General Requirements for Surface Coal Mining and Reclamation Operations on Federal Lands

4VAC25-130-740.1. Scope and purpose.

This Subchapter provides for the regulation of surface coal mining and reclamation operations on Federal lands located in the Commonwealth and shall become effective when the Director and the Secretary of the Interior enter into a cooperative agreement pursuant to 30 CFR 745.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 740.1, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-740.4. Responsibilities.

(a) The Secretary is responsible for:

- (1) Approval, disapproval or conditional approval of mining plans with respect to lands containing leased Federal coal and of modifications thereto, in accordance with the Mineral Leasing Act of 1920, as amended, 30 USC § 181 et seq.;
- (2) Execution, modification or termination of State-Federal cooperative agreements in accordance with 30 CFR 745; and
- (3) Designation of areas of Federal lands as unsuitable for all or certain types of surface coal mining and reclamation operations, or termination of such designations, in accordance with 30 CFR 769.
- (4) Determination of valid existing rights for surface coal mining and reclamation operations on Federal lands within the boundaries of any areas specified under Section 522(e)(1) or (2) of the Federal Act.
- (5) Determination that there are no significant recreational, timber, economic, or other values which may be incompatible with surface coal mining and reclamation operations on any Federal lands within the boundaries of any national forest under Section 522(e)(2) of the Federal Act.

(b) The OSM is responsible for:

- (1) Providing a decision document recommending to the Secretary approval, disapproval or conditional approval of mining plans and of modifications thereto;
- (2) Approval of experimental practices on Federal lands;
- (3) Inspection, enforcement and civil penalties with respect to surface coal mining and reclamation operations on Federal lands except as provided in Paragraph (c)(5) of this section;
- (4) Processing citizen requests for Federal inspections on Federal lands in accordance with 30 CFR 842, 843 and 845; and
- (5) Overseeing the division's administration and enforcement of the State program on Federal lands pursuant to the terms of the cooperative agreement.

(c) The following responsibilities of the OSM may be delegated to the division under the cooperative agreement:

- (1) Review and approval, conditional approval or disapproval of permit applications for surface coal mining and reclamation operations on Federal lands, revisions or renewals thereof, and applications for the transfer, sale or assignment of such permits;
- (2) Consultation with and obtaining the consent, as necessary, of the Federal land management agency with respect to post-mining land use and to any special requirements necessary to protect non-coal resources of the areas affected by surface coal mining and reclamation operations;
- (3) Consultation with and obtaining the consent, as necessary, of the Bureau of Land Management with respect to requirements relating to the development, production and recovery of mineral resources on lands affected by surface coal mining and reclamation operations involving leased Federal coal pursuant to 43 CFR 3400;
- (4) Approval and release of performance bonds, liability insurance and, as applicable, Federal lessee protection bonds required for surface coal mining and reclamation operations on Federal lands. Approval and release of Federal lessee protection bonds requires the concurrence of the Federal land management agency;
- (5) Inspection, enforcement and civil penalty activities for (i) exploration operations not subject to 43 CFR 3480-3487, and (ii) surface coal mining and reclamation operations on Federal lands;
- (6) Review and approval of exploration operations not subject to the requirements of 43 CFR 3480-3487; and
- (7) Preparation of documentation to comply with the requirements of the National Environmental Policy Act (NEPA) (42 USC § 4321 et seq.), except, the OSM shall continue to be responsible for:

- (i) Determining the scope, content and format and ensuring the objectivity of NEPA compliance documents;
- (ii) Making the determination of whether or not the preparation of an environmental impact statement is required;
- (iii) Notifying and soliciting views of other State and Federal agencies, as appropriate, on the environmental effects of the proposed action;
- (iv) Publishing and distributing draft and final NEPA compliance documents;
- (v) Making policy responses to comments on draft NEPA compliance documents;
- (vi) Independently evaluating NEPA compliance documents; and
- (vii) Adopting NEPA compliance documents and determining Federal actions to be taken on alternatives presented in such documents.

(d) The Bureau of Land Management is responsible for:

- (1) Receiving and approving exploration plans pursuant to 43 CFR 3480-3487;
- (2) Inspection, enforcement and civil penalties with respect to the terms and conditions of coal exploration licenses issued pursuant to 43 CFR 3400;
- (3) Inspection, enforcement and civil penalties with respect to the terms and conditions of exploration operations subject to 43 CFR 3480-3487;
- (4) Reviewing the resource recovery and protection plan and modifications thereto, as required by 43 CFR 3480-3487 and recommending to the Secretary approval, disapproval or conditional approval of the resource recovery and protection plan;
- (5) Inspection, enforcement and civil penalties with respect to the recovery and protection of the coal resource as required by 43 CFR 3480-3487;
- (6) Protecting mineral resources not included in the coal lease;
- (7) Issuance of exploration licenses for Federal coal subject to the requirements of 43 CFR 3400;
- (8) Issuance of leases and licenses to mine Federal coal subject to the requirements of 43 CFR 3400; and
- (9) Issuance, readjustment, modification, termination, cancellation, and approval of transfers of Federal coal leases pursuant to the Mineral Leasing Act and the Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 USC § 351 et seq.

(e) The Federal land management agency is responsible for:

- (1) Determining post-mining land uses;
- (2) Protection of non-mineral resources;
- (3) Requiring such conditions as may be appropriate to regulate surface coal mining and

reclamation operations under other provisions of law applicable to such lands under its jurisdiction; and

(4) Where land containing leased Federal coal is under the surface jurisdiction of a Federal agency other than the Department of the Interior, concur in the terms of the mining plan approval.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 740.4, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-740.11. Applicability.

(a) Upon approval of a cooperative agreement between the Commonwealth and the Secretary this Subchapter shall apply to:

- (1) Coal exploration operations on Federal lands not subject to 43 CFR 3480-3487;
- (2) Surface coal mining and reclamation operations on lands containing leased Federal coal; and
- (3) Surface coal mining and reclamation operations on lands in Virginia where either the coal to be mined or the surface is owned by the United States.

(b) The cooperative agreement shall delineate the responsibilities of the Secretary and the Commonwealth with respect to the administration of the regulatory program and this Subchapter.

(c) Nothing in this Subchapter shall affect in any way the authority of the Secretary or any Federal land management agency to include in any lease, license, permit, contract, or other instrument such conditions as may be appropriate to regulate surface coal mining and reclamation operations under provisions of law other than the Federal Act on land under their jurisdiction.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 740.11, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-740.13. Permits.

(a) General requirements.

(1) No person shall conduct surface coal mining operations on lands subject to this Part unless that person has first obtained a permit issued pursuant to this Part.

(2) Every person conducting surface coal mining and reclamation operations on lands subject to this Part shall comply with the terms and conditions of the permit and the lease or license, the Federal Act, 30 CFR Subchapter D, Virginia's regulatory program and all other applicable State and Federal laws and regulations.

(b) Permit application package.

(1) Each application for a permit, or permit revision or renewal thereof to conduct surface coal mining and reclamation operations on lands subject to this Part shall be accompanied by a permit fee required by 4VAC25-130-777.17 and made payable to the Treasurer of Virginia.

(2) Seven copies of the complete permit application package shall be filed with the division.

(3) Each permit application package shall include:

(i) The information required for a permit application or for an application for revision or renewal of a permit pursuant to Subchapter VG;

(ii) The resource recovery and protection plan required by 43 CFR 3480-3487 for operations on lands containing leased Federal coal; and

(iii) Where the proposed operations are on lands containing leased Federal coal, the following supplemental information to ensure compliance with Federal laws and regulations other than the Federal Act:

(A) A description of the affected area of the proposed surface coal mining and reclamation operation with respect to:

(1) Increases in employment, population and revenues to public and private entities, and

(2) the ability of public and private entities to provide goods and services necessary to support surface coal mining and reclamation operations.

(B) An evaluation of impacts to the scenic and aesthetic resources, including noise on the surrounding area, due to the proposed surface coal mining and reclamation operation.

(C) A statement, including maps and ownership data as appropriate, of any cultural or historical sites listed on the National Register of Historic Places within the affected area of the proposed surface coal mining and reclamation operation.

(D) A statement of the classes of properties of potential significance within the disturbed area, and a plan for the identification and treatment, in accordance with 36 CFR 800, of properties significant and listed or eligible for listing on the National Register of Historic Places within the disturbed area of the proposed surface coal mining and reclamation operation.

(E) A description of the probable changes in air quality resulting from the mining

operation and any necessary measures to comply with prevention of significant deterioration limitations, State Implementation Plans, or other Federal or State laws for air quality protection.

(F) A description of the location, acreage and condition of important habitats of selected indicator species located within the affected area of the proposed surface coal mining and reclamation operation.

(G) A description of active and inactive nests and prey areas of any Bald or Golden eagles located within the affected area of the proposed surface coal mining and reclamation operations.

(H) A description of all threatened and endangered species and their critical habitats located within the affected area of the proposed surface coal mining and reclamation operations.

(4) Where the surface of the Federal lands is subject to a lease or permit issued by the Federal government to a person other than the applicant, the permit application package shall contain information sufficient to demonstrate compliance with the requirements of 4VAC25-130-740.15(c)(1).

(c) Permit review and processing. Applications for permits, permit revisions or renewals thereof to conduct surface coal mining and reclamation operations on land subject to this Subchapter shall be reviewed and processed in accordance with Subchapter VG, subject to the following additional requirements:

(1) Permit terms and conditions. Permits shall include, as applicable, terms and conditions required by the lease issued pursuant to the Mineral Leasing Act and by other applicable Federal laws and regulations.

(2) Criteria for permit approval or denial. The division shall not approve an application for a permit, or permit revision or renewal thereof for surface coal mining and reclamation operations on lands subject to this Part unless the application is in accordance with the requirements of Subchapter VG and the cooperative agreement.

(3) Public participation in permit review process. Where public hearings were held and determinations made under section 2(a)(3)(A), (B) and (C) of the Mineral Leasing Act (30 USC § 201(a)(3)(A), (B) and (C)), such hearings may be made a part of the record of each public hearing on a permit application held pursuant to the requirements of the Virginia regulatory program and 30 CFR 740. Matters covered at such hearings and determinations made at such hearings need not be readdressed.

(4) Permit review processing for operations on lands administered by a Federal land management agency. Upon receipt of a permit application package or a proposed revision or renewal of an approved permit that involves surface coal mining and reclamation operations on lands administered by an agency of the Federal Government, the division shall transmit a copy of the complete permit application package, or proposed revision or renewal thereof, to

the Federal land management agency, with a request for review and comment.

(5) Consultation with other Federal agencies. Prior to approving or disapproving a permit, permit revision or renewal thereof, the division shall consider the comments of the Federal land management agency and include these comments in the record of permit decisions.

(6) Permit processing schedule. The division shall process the permit application package within the time schedule established by 4VAC25-130-773.15, except that the schedule may be extended if necessary to ensure compliance with Federal laws and regulations other than the Federal Act.

(7) Bonds and insurance required for issuance of permits. After the approval of an application for a new or revised permit or for renewal of an existing permit, but prior to issuance of such permit, the applicant/permittee shall file with the division: (i) a performance bond which meets the requirements of Subchapter VJ; (ii) proof of liability insurance in accordance with 4VAC25-130-800.60; and (iii) where required, evidence of the execution of a Federal lessee protection bond.

(d) Review of permit revisions.

(1) The division shall inform the OSM of each request for a permit revision with respect to operations on lands containing leased Federal coal.

(2) The OSM shall review each permit revision in consultation with the Bureau of Land Management and the appropriate Federal land management agency to determine whether the permit revision constitutes a mining plan modification requiring the Secretary's approval under 30 CFR 746.18.

(3) The division shall consult with the Federal land management agency to determine whether any permit revision will adversely affect Federal resources other than coal and whether the revision is consistent with that agency's land use plans for other Federal laws, regulations and executive orders for which it is responsible.

(e) Transfer, assignment or sale of rights.

(1) The division, before approving or disapproving an application for transfer, assignment or sale of rights granted under a permit issued pursuant to this Subchapter, shall consult with the appropriate Federal land management agency and the Bureau of Land Management, as applicable.

(2) Approval of a transfer, assignment or sale of rights granted under a permit issued pursuant to this Subchapter shall not be construed to constitute a transfer or assignment of leasehold interests. Leasehold interests may be transferred or assigned only in accordance with 43 CFR 3453.

(f) Suspension or revocation of permits.

(1) A permit to conduct surface coal mining and reclamation operations on Federal lands may be suspended or revoked by the division in accordance with Part 843.

(2) If a permit to conduct surface coal mining and reclamation operations on lands containing leased Federal coal is suspended or revoked, the division shall notify the Bureau of Land Management so that it may determine whether action should be taken to cancel the Federal lease. This section does not release the Federal lessee from the diligent development or continued operation requirements of 43 CFR 3480-3487.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 740.13, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-740.15. Bonds on federal lands.

(a) Federal lease bonds.

(1) Each holder of a Federal coal lease that is covered by a Federal lease bond required under 43 CFR 3474 may apply to the authorized officer of the Federal agency that has administrative jurisdiction over the Federal lands for release of liability for that portion of the Federal lease bond that covers reclamation requirements.

(2) The authorized officer may release the liability for that portion of the Federal lease bond that covers reclamation requirements if:

- (i) The lessee has secured a suitable performance bond covering the permit area under this Part;
- (ii) There are no pending actions or unresolved claims against existing bonds; and
- (iii) The authorized officer has received concurrence from the OSM and the Bureau of Land Management.

(b) Performance bonds. The performance bonds required for operations on Federal lands shall be made payable to the United States and the Commonwealth of Virginia: Director-Division of Mined Land Reclamation.

(c) Federal lessee protection bonds.

(1) Where leased Federal coal is to be mined and the surface of the land is subject to a lease or permit issued by the United States for purposes other than surface coal mining, the applicant for a mining permit, if unable to obtain the written consent of the permittee or lessee of the surface to enter and commence surface coal mining operations, shall submit to the division with the application evidence of execution of a bond or undertaking which meets the requirements of this section. The Federal lessee protection bond is in addition to the performance bond required by Subchapter VJ. This section does not apply to permits or licenses for the use of the surface that do not convey to the permittee or licensee the right of

transfer, sale or consent to other uses.

(2) The bond shall be payable to the United States for the use and benefit of the permittee or lessee of the surface lands involved.

(3) The bond shall secure payment to the surface estate for any damage which the surface coal mining and reclamation operation causes to the crops or tangible improvements of the permittee or lessee of the surface lands.

(4) The amount of the bond shall be determined either by the applicant and the Federal lessee or permittee, or if an agreement cannot be reached, as determined in an action brought against the person conducting surface coal mining and reclamation operations or upon the bond in a court of competent jurisdiction.

(d) Release of bonds.

(1) A Federal lease bond may be released by the OSM upon satisfactory compliance with all applicable requirements of 43 CFR 3480-3487 and 43 CFR 3400 and after the release is approved by the Bureau of Land Management.

(2) A Federal lessee protection bond shall be released by the OSM upon the written consent of the permittee or lessee.

(3) Where surface coal mining and reclamation operations are subject to an approved mining plan, a performance bond shall be released by the division after the release is approved by the OSM.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 740.15, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-740.17. Inspection, enforcement and civil penalties.

(a)(1) General requirements. Under an approved cooperative agreement, Subchapter VL shall govern inspection, enforcement and civil penalty activities by the division with respect to surface coal mining and reclamation operations on Federal lands, while the requirements of 30 CFR 842, 843 and 845 shall govern the OSM inspection, enforcement and civil penalty activities conducted in oversight of Virginia's program.

(2) The requirements of this section shall not apply to coal exploration on Federal lands subject to the requirements of 43 CFR 3480-3487.

(b) Right of entry.

(1) Persons engaging in coal exploration or surface coal mining and reclamation operations

on Federal lands shall provide access for any authorized officer of the OSM, the Director, and, as applicable, the Bureau of Land Management or the appropriate Federal land management agency to inspect the operations, without advance notice or a search warrant and upon presentation of appropriate credentials, to determine whether the operations are in compliance with all applicable laws, regulations, notices and orders, and terms and conditions of the permit.

(2) Any authorized representative of the Director and, as applicable, the Bureau of Land Management may, at reasonable times and without delay, have access to and copy any records and inspect any monitoring equipment or method of operation required under the Act, this Subchapter and the permit, lease, license or mining plan in accordance with Paragraph (a) of this section.

(3) No search warrant shall be required with respect to any activity under Paragraph (a) or (b) of this section, except entry into a building without consent of the person in control of the building.

(c) Inspections. Inspections shall, to the extent practical, be conducted jointly if more than one government agency is involved. The division shall coordinate inspections by Federal agencies and may request the participation of representatives from other Federal agencies when necessary to ensure compliance with this Subchapter and other applicable Federal laws, regulations and orders.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 740.17, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-740.19. Performance standards.

(a) Operations and reclamation.

(1) Surface coal mining and reclamation operations on lands subject to this Part shall be conducted in accordance with Subchapter VK.

(2) Surface coal mining and reclamation operations on lands containing leased Federal coal shall also be conducted in accordance with the requirements of the terms, conditions and stipulations of the lease issued under the Mineral Leasing Act and its implementing regulations in 43 CFR 3480-3487, as applicable, and the mining plan.

(b) Completion of operations and abandonment.

(1) Upon completion of operations, bonds shall be released in accordance with 4VAC25-130-740.15(d).

(2) Where there is a Federal lease bond:

(i) Not less than 30 days prior to permanent cessation or abandonment of surface coal mining and reclamation operations, the person conducting those operations shall submit to the OSM, in duplicate, a notice of intention to cease or abandon those operations, with a statement of the number of acres affected by the operations, the extent and kind of reclamation accomplished and the structures and other facilities that are to be removed from or remain on the permit area.

(ii) Upon receipt of this notice, the Bureau of Land Management and the appropriate Federal land management agency shall promptly make joint inspections to determine whether all operations have been completed in accordance with the requirements of 43 CFR 3480-3487, the lease or licenses and the mining plan. Where all of these requirements have been complied with, the liability under the lease bond of the person conducting surface coal mining and reclamation operations shall be terminated.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 740.19, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

Part 761

Areas Designated by Act of Congress

4VAC25-130-761.1. Scope.

This Part establishes the procedures and standards to be followed in determining whether a proposed surface coal mining and reclamation operation can be authorized in light of the prohibitions and limitations in Section 45.1-252 of the Act for those types of operations on certain Federal, public and private lands in the Commonwealth.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 761.1, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-761.3. Authority.

The Director is authorized by Section 45.1-252 of the Act to prohibit or limit surface coal mining operations on or near certain private, Federal, and other public lands, subject to valid existing rights and except for those operations which existed on August 3, 1977.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 761.3, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-761.11. Areas where mining is prohibited or limited.

Subject to valid existing rights, no surface coal mining operations shall be conducted after August 3, 1977, unless those operations existed on the date of enactment:

(a) On any lands within the boundaries of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers Systems including, for study rivers designated under section 5(a) of the Wild and Scenic Rivers Act (16 USC § 1276(a)), a corridor extending at least one-quarter mile from each bank for the length of the segment being studied, and National Recreation Areas designated by Act of Congress;

(b) On any Federal lands within the boundaries of any national forest; provided, however, that surface coal mining operations may be permitted on such lands, if the Secretary finds that there are no significant recreational, timber, economic, or other values which may be incompatible with surface coal mining operations; and surface operations and impacts are incident to an underground coal mine.

(c) On any lands where mining will adversely affect any publicly owned park or any place included in the National Register of Historic Places, unless approved jointly by the division and the Federal, State, or local agency with jurisdiction over the park or place;

(d) Within 100 feet, measured horizontally, of the outside right-of-way line of any public road, except--

(1) Where mine access roads or haulage roads join such right-of-way line; or

(2) Where the division or the appropriate public road authority, pursuant to being designated as the responsible agency by the Director, allows the public road to be relocated, closed, or the area affected to be within 100 feet of such road, after--

(i) Public notice and opportunity for a public hearing in accordance with 4VAC25-130-761.12(d); and

(ii) Making a written finding that the interests of the affected public and landowners will be protected;

(e) Within 300 feet, measured horizontally, of any occupied dwelling, except when--

(1) The owner of the dwelling has provided a written waiver consenting to surface coal mining operations closer than 300 feet; or

(2) The part of the mining operation which is within 300 feet of the dwelling is a haul road or access road which connects with an existing public road on the side of the public road opposite the dwelling;

(f) Within 300 feet measured horizontally of any public building, school, church, community or institutional building or public park; or

(g) Within 100 feet measured horizontally of a cemetery.

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 761.11, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Volume 29, Issue 13, eff. March 27, 2013.

4VAC25-130-761.12. Procedures.

(a) Upon receipt of a complete application for a surface coal mining and reclamation operation permit, the division shall review the application to determine whether surface coal mining operations are limited or prohibited under 4VAC25-130-761.11 on the lands which would be disturbed by the proposed operations.

(b)(1) Where the proposed operation would be located on any lands listed in 4VAC25-130-761.11(a), (f), or (g), the division shall reject the application if the applicant has no valid existing rights for the area, or if the operation did not exist on August 3, 1977.

(2) If the division is unable to determine whether the proposed operation is located within the boundaries of any of the lands in 4VAC25-130-761.11(a) or closer than the limits provided in 4VAC25-130-761.11(f) and (g), the division shall transmit a copy of the relevant portions of the permit application to the appropriate Federal, State, or local government agency for a determination or clarification of the relevant boundaries or distances, with a notice to the appropriate agency that it has 30 days from receipt of the request in which to respond. The National Park Service or the U.S. Fish and Wildlife Service shall be notified of any request for a determination of valid existing rights pertaining to areas within the boundaries of areas under their jurisdiction and shall have 30 days from receipt of the notification in which to respond. The division, upon written request by the appropriate agency, shall grant an extension to the 30-day period of an additional 30 days. If no response is received within the 30-day period or within the extended period granted, the division may make the necessary determination based on the information it has available.

(c) Where the proposed operation would include Federal lands within the boundaries of any national forest, and the applicant seeks a determination that mining is permissible under 30 CFR 761.11(b), the applicant shall submit a permit application to the Director of the OSM for processing under 30 CFR Subchapter D. Before acting on the permit application, the Director of the OSM shall ensure that the Secretary's determination has been received and the findings required by Section 522(e)(2) of the Federal Act have been made.

(d) Where the mining operation is proposed to be conducted within 100 feet, measured horizontally, of the outside right-of-way line of any public road (except as provided in 4VAC25-130-761.11(d)(2)) or where the applicant proposes to relocate or close any public road, the division or public road authority designated by the Director shall--

- (1) Require the applicant to obtain necessary approvals of the authority with jurisdiction over the public road;
- (2) Provide an opportunity for a public hearing in the locality of the proposed mining operation for the purpose of determining whether the interests of the public and affected landowners will be protected;
- (3) If a public hearing is requested in writing, provide advance notice of the public hearing, to be published in a newspaper of general circulation in the affected locale at least 2 weeks prior to the hearing; and
- (4) Make a written finding based upon information received at the public hearing within 30 days after completion of the hearing, or after any public comment period ends if no hearing is held, as to whether the interests of the public and affected landowners will be protected from the proposed mining operation. No mining shall be allowed within 100 feet of the outside right-of-way line of a road, nor may a road be relocated or closed, unless the division or public road authority determines that the interests of the public and affected landowners will be protected.

(e)(1) Where the proposed surface coal mining operations would be conducted within 300 feet, measured horizontally, of any occupied dwelling, the permit applicant shall submit with the application a written waiver by lease, deed, or other conveyance from the owner of the dwelling, clarifying that the owner and signator had the legal right to deny mining and knowingly waived that right. The waiver shall act as consent to such operations within a closer distance of the dwelling as specified.

(2) Where the applicant for a permit after August 3, 1977, had obtained a valid waiver prior to August 3, 1977, from the owner of an occupied dwelling to mine within 300 feet of such dwelling, a new waiver shall not be required.

(3)(i) Where the applicant for a permit after August 3, 1977, had obtained a valid waiver from the owner of an occupied dwelling, that waiver shall remain effective against all persons acquiring any interest in the dwelling, whether by purchase, gift, as a creditor, or in any other way, who had actual or constructive knowledge of the existing waiver at the time of acquisition of the interest.

(ii) All persons acquiring any interest, whether by purchase, gift, as a creditor or in any other way, in a dwelling, after a valid waiver has been obtained under this Paragraph (e), shall be considered to have constructive knowledge of the waiver if the waiver has been properly recorded in the Clerk's Office of the Circuit Court of the county or city in which the dwelling is located, or if the mining has proceeded to within the 300-foot limit prior to the date of acquisition.

(f)(1) Where the division determines that the proposed surface coal mining operation will adversely affect any publicly owned park or any place included in the National Register of Historic Places, the division shall transmit to the Federal, State, or local agency with jurisdiction over the publicly owned park or publicly owned National Register place a copy of applicable parts of the permit application, together with a request for that agency's approval or disapproval of the operation, and a notice to that agency that it has 30 days from receipt of the request within which to respond and that failure to interpose a timely objection will constitute approval. The division, upon written request by the appropriate agency, may grant an extension to the 30-day period of an additional 30 days. Failure to interpose an objection within 30 days or the extended period granted shall constitute an approval of the proposed permit application.

(2) A permit for the operation shall not be issued unless jointly approved by all affected agencies;

(g) If the division determines that the proposed surface coal mining operation is not prohibited under Section 45.1-252 of the Act and this Part, the Director may nevertheless, pursuant to appropriate petitions, designate such lands as unsuitable for all or certain types of surface coal mining operations pursuant to Part 762 or 764.

(h) A determination by the division that a person holds or does not hold valid existing rights or that surface coal mining operations did or did not exist on the date of enactment shall be subject to administrative and judicial review under 4VAC25-130-775.11 and 4VAC25-130-775.13.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 761.12, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-761.13. Exception for existing operations.

The prohibitions and limitations of 4VAC25-130-761.11 do not apply to surface coal mining operations for which a valid permit issued under Subchapter VG of this chapter exists when the land comes under the protection of 4VAC25-130-761.11. This exception applies only to lands within the permit area as it exists when the land comes under the protection of 4VAC25-130-761.11.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 29, Issue 13, eff. March 27, 2013.

4VAC25-130-761.16. Submission and processing of requests for valid existing rights determinations.

A. Basic framework for valid existing rights determinations. 30 CFR 761.16(a) identifies the agency responsible for making a valid existing rights determination and the definition that it

must use based upon which subsection of 30 CFR 761.11 or 4VAC25-130-761.11 applies and whether the request includes federal lands.

B. A request for a valid existing rights determination must be submitted to the division if a person intends to conduct surface coal mining operations on the basis of valid existing rights under 4VAC25-130-761.11 or wishes to confirm the right to do so. The request may be submitted before the person prepares and submits an application for a permit or boundary revision for the land.

1. The person must provide a property rights demonstration under the definition of valid existing rights if the request relies upon the good faith/all permits or the needed for and adjacent standard set forth in 4VAC25-130.700.5. For the land subject to the request, the demonstration must include:

- a. A legal description of the land;
- b. Complete documentation of the character and extent of the person's current interests in the surface and mineral estates of the land;
- c. A complete chain of title for the surface and mineral estates of the land;
- d. A description of the nature and effect of each titles instrument that forms the basis of the request, including any provision pertaining to the type or method of mining or mining-related surface disturbances and facilities;
- e. A description of the type and extent of surface coal mining operations that the person claims the right to conduct, including the method of mining, any mining-related surface activities and facilities, and an explanation of how those operations would be consistent with Virginia property law;
- f. Complete documentation of the nature and ownership, as of the date that the land came under the protection of § 45.1-252 or 4VAC25-130-761.11, of all property rights for the surface and mineral estates;
- g. Names and addresses of the current owners of the surface and mineral estates of the land;
- h. If the coal interests have been severed from other property interests, documentation that the person has notified and provided reasonable opportunity for the owners of other property interests in the land to comment on the validity of the person's property rights claims; and
- i. Any comments that the person receives in response to the notification provider under subdivision 1 h of this subsection.

2. If the request relies upon the good faith/all permits standard in subdivision (b)(1) of the valid existing rights definition in 4VAC25-130-700.5, the person must also submit the following information about permits, licenses, and authorizations for surface coal mining operations on the land subject to the request that the person or predecessor in interest

obtained, submitted, or made:

- a. Approval and issuance dates and identification numbers for any permits, licenses, and authorizations obtained before the land came under the protection of § 45.1-252 or 4VAC25-130-761.11.
- b. Application dates and identification numbers for any permits, licenses, and authorizations submitted before the land came under the protection of § 45.1-252 or 4VAC25-130-761.11.
- c. An explanation of any other good faith effort made to obtain the necessary permits, licenses, and authorizations as of the date that the land came under the protection of § 45.1-252 or 4VAC25-130-761.11

3. If the request relies upon the needed for and adjacent standard in subdivision (b)(2) of the valid existing rights definition in 4VAC25-130-700.5, the person must explain how and why the land is needed for and immediately adjacent to the operation upon which the request is based, including a demonstration that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of § 45.1-252 or 4VAC25-130-761.11

4. If the request relies upon one of the standards for roads in subdivision (c) of the valid existing rights definition in 4VAC25-130-700.5, the person must submit satisfactory documentation that:

- a. The road existed when the land upon which it is located came under the protection of § 45.1-252 or 4VAC25-130-761.11 and the person has a legal right to use the road for surface coal mining operations;
- b. A properly recorded right of way or easement for a road in that location existed when the land came under the protection of § 45.1-252 or 4VAC25-130-761.11 and under the document creating the right of way or easement and under any subsequent conveyances, the person has a legal right to use or construct a road across that right of way or easement to conduct surface coal mining operations; or
- c. A valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of § 45.1-252 or 4VAC25-130-761.11.

C. Initial review of request.

1. The division must conduct an initial review to determine whether the request includes all applicable components of the submission requirements of subsection B of this section. The review pertains only to the completeness of the request, not the legal or technical adequacy of the materials submitted.

2. If the request does not include all applicable components of the submission requirements of subsection B of this section, the division must notify the person and establish a reasonable

time for submission of the missing information. Should the person not provide the information requested by the division under this subdivision within the time specified or as subsequently extended, the division must issue a determination under subdivision E 4 of this section that the person has not demonstrated valid existing rights.

3. When the request includes all applicable components of the submission requirements of subsection B of this section, the division must implement the notice and comment requirements of subsection D of this section.

D. 1. When the division determines that the request satisfies the completeness requirements of subsection C of this section, it shall publish a notice in a newspaper of general circulation in the county in which the land is located inviting public comment on the merits of the request. OSM will publish a similar notice in the Federal Register if the request involves federal lands within an area listed in 4VAC25-130-761.11 (a) or (b). The public notice must include:

a. The location of the land to which the request pertains.

b. A description of the type of surface coal mining operations planned.

c. A reference to and brief description of the applicable standard or standards under the definition of valid existing rights in 4VAC25-130-700.5.

(1) If the request relies upon the good faith/all permits or the needed for and adjacent standard set forth in the valid existing rights definition in 4VAC25-130-700.5, the notice must include a description of the property rights that the person claims and the basis for the claim.

(2) If the request relies upon the road standard set forth in subdivision (c) (1) of the valid existing rights definition in 4VAC25-130-700.5, the notice must include a description of the basis for the claim that the road existed when the land came under the protection of § 45.1-252 D or 4VAC25-130-761.11. In addition, the notice must include a description of the basis for the claim that the person has a legal right to use that road for surface coal mining operations.

(3) If the request relies upon the standard in subdivision (c) (2) of the valid existing rights definition in 4VAC25-130-700.5, the notice must include a description of the basis for the claim that a properly recorded right of way or easement for a road in that location existed when the land came under the protection of § 45.1-252 or 4VAC25-130-761.11. In addition, the notice must include a description of the basis for the claim that, under the document creating the right of way or easement, and under any subsequent conveyances, the person has a legal right to use or construct a road across the right of way or easement to conduct surface coal mining operations.

d. If the request relies upon one or more of the standards in subdivisions (b) and (c) (1) and (c) (2) of the valid existing rights definition in 4VAC25-130-700.5, a statement that the division will not make a decision on the merits of the request if, by the close of the comment period under the notice or the notice required by subdivision 3 of this

subsection, a person with a legal interest in the land initiates appropriate legal action in the proper venue to resolve any differences concerning the validity or interpretation of the deed, lease, easement, or other documents that form the basis of the valid existing rights claim.

e. A description of the procedures the division will follow in processing the request.

f. The closing date of the public comment period, which shall be a minimum of 30 days after the notice's publication date.

g. A statement that interested persons may request, in writing, from the division a 30-day extension of the public comment period. The extension request shall set forth with reasonable specificity the reasons the commenter needs the additional time to submit comments.

h. Include the division office's address where a copy of the valid existing rights request is available for public inspection and where comments and requests for extension of the comment period should be sent.

2. The division must promptly provide a copy of the notice required under subdivision 1 of this subsection to:

a. All reasonably locatable owners of surface and mineral estates in the land included in the valid existing rights request.

b. The owner of the feature causing the land to come under the protection of 4VAC25-130-761.11, and when applicable, the agencies with primary jurisdiction over the feature with respect to the values causing the land to come under the protection of 4VAC25-130-761.11.

3. The notice required under subdivision 2 of this subsection must provide a 30-day comment period and specify that an additional 30 days may be granted for good cause shown at the discretion of the division or agency responsible for the valid existing rights determination.

E.1. The division or agency responsible for making the valid existing rights determination must review the materials submitted under subsection B of this section, comments received under subsection D of this section, and any other relevant, reasonably available information to determine whether the record is sufficiently complete and adequate to support a decision on the merits of the request. If not, the division must notify the person in writing explaining the inadequacy of the record and requesting submittal within a specified reasonable time of any additional information that the division deems necessary to remedy the inadequacy.

2. Once the record is complete and adequate, the division must make a determination as to whether valid existing rights have been demonstrated. The division's decision must explain how the person has or has not satisfied all applicable elements of the valid existing rights definition under 4VAC25-130-700.5, contain findings of fact and conclusions, and specify the reasons for the conclusions.

3. When the request relies upon one or more of the standards in subdivisions (b) and (c) (1)

and (2) of the valid existing rights definition in 4VAC25-130-700.5, the division:

a. Must issue a determination that the person has not demonstrated valid existing rights if the property rights claim is the subject of pending litigation in a court or administrative body with the jurisdiction over the property rights in question. The division will make the determination without prejudice, meaning that the person may refile the request once the property rights dispute is finally adjudicated. This applies only to situations in which legal action has been initiated as of the closing date of the comment period under subdivisions D 1 and 3 of this section.

b. If the record indicates disagreement of the accuracy of the person's property rights claim, but the disagreement is not the subject of pending litigation in a court or administrative agency of competent jurisdiction, must evaluate the merits of the information in the record and determine whether the person has demonstrated that the requisite property rights exist under subdivision (a), (c) (1) or (c) (2) of the valid existing rights definition in 4VAC25-130-700.5, as appropriate. The division must then proceed with the decision process under subdivision 2 of this subsection.

4. The division must issue a determination that the person has not demonstrated valid existing rights if the person does not submit information that the division requests under subdivision C 2 of this section or subdivision 1 of this subsection within the time specified or as subsequently extended. The division will make the determination without prejudice, meaning the person may refile a revised request at any time.

5. After making a valid existing rights determination, the division shall:

a. Provide a copy of the determination with an explanation of appeal rights and procedures to the person seeking the determination, owner or owners of the land to which the determination applies, owner of the feature causing the land to come under the protection of 4VAC25-130-761.11, and, when applicable, the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of 4VAC25-130-761.11.

b. Publish notice of the determination in a newspaper of general circulation in the county in which the land is located. The federal Office of Surface Mining Reclamation and Enforcement (OSMRE) will publish the determination, together with an explanation of appeal rights and procedures in the Federal Register if the request includes federal lands within an area listed in 4VAC25-130-761.11 (a) or (b).

F. The division's valid existing rights determination shall be subject to administrative and judicial review under 4VAC25-130-775.11 and 4VAC25-130-775.13.

G. The division must make a copy of the valid existing rights determination request available to the public as provided by 4VAC25-130-773.13 (d) and the records associated with that request, and any subsequent determination under subsection E of this section, available to the public in accordance with 4VAC25-130-840.14.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 29, Issue 13, eff. March 27, 2013.

Part 762

Criteria for Designating Areas as Unsuitable for Surface Coal Mining Operations

4VAC25-130-762.1. Scope and responsibility.

This Part establishes the minimum criteria to be used in determining whether lands should be designated as unsuitable for all or certain types of surface coal mining operations. The Director and the division shall use the criteria in this Part for the evaluation of each petition for the designation of areas as unsuitable for surface coal mining operations.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 762.1, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-762.11. Criteria for designating lands as unsuitable.

(a) Upon petition an area shall be designated as unsuitable for all or certain types of surface coal mining operations, if the Director determines that reclamation is not technologically and economically feasible under the Act and this chapter.

(b) Upon petition, an area may be (but is not required to be) designated as unsuitable for certain types of surface coal mining operations, if the operations will:

- (1) Be incompatible with existing Federal, State or local land use plans or programs;
- (2) Affect fragile or historic lands in which the operations could result in significant damage to important historic, cultural, scientific, or aesthetic values or natural systems;
- (3) Affect renewable resource lands in which the operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products; or
- (4) Affect natural hazard lands in which the operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 762.11, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16,

1985; January 7, 1987, July 22, 1987, November 25, 1987, October 12, 1988, December 26, 1990, July 1, 1991, July 17, 1991, November 20, 1991, July 7, 1992, May 5, 1993, and October 19, 1994.

4VAC25-130-762.13. Land exempt from designation as unsuitable for surface coal mining operations.

The requirements of this Part do not apply to:

- (a) Lands on which surface coal mining operations were being conducted on August 3, 1977;
- (b) Lands covered by a permit issued under the Act; or
- (c) Lands where substantial legal and financial commitments in surface coal mining operations were in existence prior to January 4, 1977.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 762.13, eff. December 15, 1981; amended, eff. June 28, 1982, October 28, 1982, December 14, 1982, October 11, 1983, December 27, 1983, May 8, 1984, June 22, 1984, August 2, 1984, October 16, 1985, January 7, 1987, July 22, 1987, November 25, 1987, October 12, 1988, December 26, 1990, July 1, 1991, July 17, 1991, November 20, 1991, July 7, 1992, May 5, 1993, and October 19, 1994.

4VAC25-130-762.14. Exploration on land designated as unsuitable for surface coal mining operations.

Designation of any area as unsuitable for all or certain types of surface coal mining operations pursuant to Section 45.1-252 of the Act and this Subchapter does not prohibit coal exploration operations in the area, if conducted in accordance with the Act, this chapter, and other applicable requirements. Exploration operations on any lands designated unsuitable for surface coal mining operations must be approved by the division under Part 772 to ensure that exploration does not interfere with any value for which the area has been designated unsuitable for surface coal mining operations.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 762.14, eff. December 15, 1981; amended, eff. June 28, 1982, October 28, 1982, December 14, 1982, October 11, 1983, December 27, 1983, May 8, 1984, June 22, 1984, August 2, 1984, October 16, 1985, January 7, 1987, July 22, 1987, November 25, 1987, October 12, 1988, December 26, 1990, July 1, 1991, July 17, 1991, November 20, 1991, July 7, 1992, May 5, 1993, and October 19, 1994.

Part 764

Procedures for Designating Areas Unsuitable for Surface Coal Mining Operations

4VAC25-130-764.11. General process requirements.

The Director's decisions concerning unsuitability petitions shall be based upon competent, scientifically sound data and relevant information and shall include the processes and

requirements of this Part.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 764.11, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-764.13. Petitions.

(a) Right to petition. Any person having an interest which is or may be adversely affected has the right to petition the Director to have an area designated as unsuitable for surface coal mining operations, or to have an existing designation terminated. For the purpose of this action, a person having an interest which is or may be adversely affected must demonstrate how he meets an "injury in fact" test by describing the injury to his specific affected interests and demonstrate how he is among the injured.

(b) Designation. A complete petition for designation shall include:

- (1) The petitioner's name, address, telephone number, and notarized signature;
- (2) A statement of whether the petitioner is an individual, an association, sole proprietorship, partnership, corporation, or other entity. If the petitioner is an entity other than an individual, the petition shall contain the names and addresses of the principals, officers, and the resident agent of the petitioner;
- (3) Identification of the petitioned area, including its location and size, and a U.S. Geological Survey topographic map clearly outlining the perimeter of the petitioned area;
- (4) An identification of the petitioner's interest which is or may be adversely affected by surface coal mining operations, including a statement demonstrating how the petitioner satisfies the requirements of Paragraph (a) of this section;
- (5) The owners and lessees, if known, of the surface and mineral property of the area covered by the petition;
- (6) A description of how mining of the area has affected or may adversely affect people, land, air, water, or other resources, including the petitioner's interests; and
- (7) Allegations of fact and supporting evidence, covering all lands in the petition area, which tend to establish that the area is unsuitable for surface coal mining operations, pursuant to specific criteria of Subsections of Section 45.1-252 of the Act, assuming that contemporary mining practices required under the Act would be followed if the area were to be mined. Each of the allegations of fact should be specific as to the mining operation, if known, and the portion(s) of the petitioned area and petitioner's interests to which the allegation applies and be supported by evidence that tends to establish the validity of the allegations for the mining

operation or portion of the petitioned areas.

(8) The Director or the division may request that the petitioner provide other supplementary information which is readily available.

(c) Termination. A complete petition for termination shall include--

(1) The petitioner's name, address, telephone number, and notarized signature;

(2) Statement of whether the petitioner is an individual, an association, sole proprietorship, corporation, or other entity. If the petitioner is an entity other than an individual, the petition shall contain the names and addresses of the principals, officers, directors, and resident agent of the petitioner;

(3) Identification of the petitioned area, including its location and size and a U.S. Geological Survey topographic map clearly outlining the perimeter of the petitioned area to which the termination petition applies;

(4) An identification of the petitioner's interest which is or may be adversely affected by the designation that the area is unsuitable for surface coal mining operations including a statement demonstrating how the petitioner satisfies the requirements of Paragraph (a) of this section;

(5) The owners and lessees, if known, of the surface and mineral property of the area covered by the petition;

(6) Allegations of fact covering all lands for which the termination is proposed. Each of the allegations of fact shall be specific as to the mining operation, if any, and to portions of the petitioned area and the petitioner's interests to which the allegation applies. The allegations shall be supported by evidence, not contained in the record of the designation proceeding, that tends to establish the validity of the allegations for the mining operation or portion of the petitioned area, assuming that contemporary mining practices required under the Act would be followed were the area to be mined. For areas previously and unsuccessfully proposed for termination, significant new allegations of facts and supporting evidence must be presented in the petition. Allegations and supporting evidence should also be specific to the basis for which the designation was made and tend to establish that the designation should be terminated on the following bases:

(i) Nature or abundance of the protected resource or condition or other basis of the designation if the designation was based on criteria found in 4VAC25-130-762.11(b);

(ii) Reclamation now being technologically and economically feasible if the designation was based on the criteria found in 4VAC25-130-762.11(a); or

(iii) Resources or conditions not being affected by surface coal mining operations, or in the case of land use plans, not being incompatible with surface coal mining operations during and after mining, if the designation was based on criteria found in 4VAC25-130-762.11(b).

(7) The Director or the division may request that the petitioner provide other supplementary

information which is readily available.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 764.13, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-764.15. Initial processing, recordkeeping, and notification requirements.

(a)(1) Within 60 days of receipt of a petition, the division shall notify the petitioner by certified mail whether the petition is complete under 4VAC25-130-764.13(b) or (c). Complete, for a designation or termination petition, means that the information required under 4VAC25-130-764.13(b) or (c) has been provided.

(2) The division shall determine whether any identified coal resources exist in the area covered by the petition, without requiring any showing from the petitioner. If the division finds there are not any identified coal resources in that area, the Director shall return the petition to the petitioner with a statement of the findings.

(3) If the Director determines that the petition is incomplete, frivolous, or that the petitioner does not meet the requirements of 4VAC25-130-764.13(a), he shall return the petition to the petitioner with a written statement of the reasons for the determination and the categories of information needed to make the petition complete. A frivolous petition is one in which the allegations of harm lack serious merit.

(4) When considering a petition for an area which was previously and unsuccessfully proposed for designation, the division shall determine if the new petition presents significant new allegations of facts with evidence which tends to establish the allegations. If the petition does not contain such material, the Director may choose not to consider the petition and may return the petition to the petitioner, with a statement of his findings and a reference to the record of the previous designation proceedings where the facts were considered.

(5) The Director shall notify the person who submits a petition of any application for a permit received which includes any area covered by the petition.

(6) The Director may determine not to process any petition received insofar as it pertains to lands for which an administratively complete permit application has been filed and the first newspaper notice has been published. Based on such a determination, the division may issue a decision on a complete and accurate permit application and the Director shall inform the petitioner why he cannot consider the part of the petition pertaining to the proposed permit area.

(b)(1) Promptly after a petition is received, the Director shall notify the general public of the

receipt of the petition by a newspaper advertisement placed in the locale of the area covered by the petition, in the newspaper providing broadest circulation in the region of the petitioned area and in the Virginia Register of Regulations. The Director shall make copies of the petition available to the public and shall provide copies of the petition to other interested governmental agencies, intervenors, persons with an ownership interest of record in the property, and other persons known to the Director to have an interest in the property. Notice to the person with an ownership interest of record in the property shall be by certified mail.

(2) Promptly after the determination that a petition is complete, the Director shall request submissions from the general public of relevant information by a newspaper advertisement placed once a week for two consecutive weeks in the locale of the area covered by the petition, in the newspaper providing broadest circulation in the region of the petitioned area, and in the Virginia Register of Regulations.

(c) Until three days before the Director holds a hearing under 4VAC25-130-764.17, any person may intervene in the proceeding by filing allegations of facts describing how the designation determination directly affects the intervenor, supporting evidence, a short statement identifying the petition to which the allegations pertain, and the intervenor's name, address and telephone number.

(d) Beginning from the date a petition is filed, the Director shall compile and maintain a record consisting of all documents relating to the petition filed with or prepared by the Director. The Director shall make the record available to the public for inspection, free of charge, and for copying at reasonable cost during all normal hours at the Director's Richmond office and the Division's Big Stone Gap office. The division shall also maintain information at a public office or public building in the area in which the petitioned area is located and make this information available to the public for inspection free of charge and for copying at reasonable cost during all normal business hours. At a minimum, this information shall include a copy of the petition.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 764.15, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-764.17. Hearing requirements.

(a) Within 3 months, but no later than 10 months, following the receipt of a complete petition, the Director shall hold a public hearing in the locality of the area covered by the petition. In cases where a petition is filed prior to the first newspaper notice publication, required by 4VAC25-130-773.13(a)(1) pursuant to an administratively complete permit application, the Director shall conduct a hearing within 3 months, unless it is determined that due to the complexity of the issues additional time is necessary to prepare for the hearing, in which case, the time limit may be extended to the maximum of 10 months. If all petitioners and intervenors agree, the hearing need not be held. The hearing shall be fact finding in nature. The Hearing Officer is empowered to administer oaths and may at his discretion allow rebuttal of witnesses and cross-examination

and rebuttal of expert witnesses. Parties to the hearing may subpoena witnesses as necessary. The Hearing Officer shall make a verbatim record of the hearing which shall be preserved according to State law. No person shall bear the burden of proof or persuasion. The Hearing Officer shall send a copy of the record, any exhibits, and his recommended findings and decision to the Director and to each party to the proceeding. Parties to the proceeding may file exceptions to the recommended findings and decision to the Director. In addition to the Hearing Officer decision and recommendation all relevant parts of the data base and public comments received during the comment period and the complete administrative record shall be forwarded to the Director by the division, to be included in the Director's decision on the petition.

(b)(1) The Director shall give notice of the date, time, and location of the hearing to:

(i) Local, State, and Federal agencies which may have an interest in the decision on the petition;

(ii) The petitioner and the intervenors; and

(iii) Any person known by the Director to have a property interest in the petitioned area.

(2) Notice of the hearing shall be sent by certified mail to petitioners and intervenors, and by regular mail to government agencies and property owners involved in the proceeding, and postmarked not less than 30 days before the scheduled date of the hearing.

(c) The Director shall notify the general public of the date, time, and location of the hearing by placing a newspaper advertisement once a week for two consecutive weeks in the locale of the area covered by the petition and once during the week prior to the public hearing. The consecutive weekly advertisement must begin between 4 and 5 weeks before the scheduled date of the public hearing.

(d) The Director may consolidate in a single hearing the hearings required for each of several petitions which relate to areas in the same locale.

(e) Prior to designating any land areas as unsuitable for surface coal mining operations, the Director shall prepare a detailed statement, using existing and available information on the potential coal resources of the area, the demand for coal resources, and the impact of such designation on the environment, the economy, and the supply of coal.

(f) In the event that all petitioners and intervenors stipulate agreement prior to the hearing, the petition may be withdrawn from consideration.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 764.17, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-764.19. Decision.

(a) In reaching his decision, the Director shall use:

- (1) The information contained in the data base and inventory system as required by 4VAC25-130-764.21;
- (2) Information provided by other governmental agencies;
- (3) The detailed statement when it is prepared under 4VAC25-130-764.17(e); and
- (4) Any other relevant information submitted during the comment period.

(b) A final written decision shall be issued by the Director, including a statement of reasons, within 60 days of completion of the public hearing, or, if no public hearing is held, then within 12 months after receipt of the complete petition. The Director shall simultaneously send the decision by certified mail to the petitioner and intervenors and by regular mail to all other persons involved in the proceeding.

(c) The decision of the Director with respect to a petition, or the failure of the Director to act within the time limits set forth in this section, shall be subject to judicial review by a court of competent jurisdiction in accordance with Section 45.1-251 of the Act and 4VAC25-130-775.13. All relevant portions of the data base, inventory system, and public comments received during the public comment period set by the Director shall be considered and included in the record of the administrative proceeding.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 764.19, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-764.21. Data base and inventory system requirements.

- (a) The Department shall develop and maintain a data base and inventory system which will permit evaluation of whether reclamation is feasible in areas covered by petitions.
- (b) The Department shall include in the system information relevant to the criteria in 4VAC25-130-762.11, including, but not limited to, information received from the United States Fish and Wildlife Service, the State Historic Preservation Officer, and the Department of Environmental Quality which administers Section 127 of the Clean Air Act, as amended (42 USC § 7420 et seq.).
- (c) The Department shall add to the data base and inventory system information:
 - (1) On potential coal resources of the Commonwealth, demand for those resources, the environment, the economy and the supply of coal, sufficient to enable the Director to prepare the statements required by 4VAC25-130-764.17(e); and
 - (2) That becomes available from petitions, publications, experiments, permit applications, mining and reclamation operations, and other sources.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 764.21, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-764.23. Public information.

The Director shall:

(a) Make the information in the data base and inventory system developed under 4VAC25-130-764.21 available to the public for inspection free of charge and for copying at reasonable cost, except that specific information relating to location of properties proposed to be nominated to, or listed in, the National Register of Historic Places need not be disclosed if the Director determines that the disclosure of such information would create a risk of destruction or harm to such properties;

(b) Provide information to the public on the petition procedures necessary to have an area designated as unsuitable for all or certain types of surface coal mining operations or to have designations terminated and describe how the inventory and data base system can be used.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 764.23, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-764.25. Responsibility for implementation.

(a) The division shall not issue permits which are inconsistent with designations made pursuant to Part 761, 762, or 764.

(b) The Department shall maintain a map or other unified and cumulative record of areas designated unsuitable for all or certain types of surface coal mining operations.

(c) The division shall make available to any person any information within its control regarding designations, including mineral or elemental content which is potentially toxic in the environment but excepting proprietary information on the chemical and physical properties of the coal.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 764.25, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16,

1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

Part 772

Requirements for Coal Exploration

4VAC25-130-772.1. Scope and purpose.

This Part establishes the requirements and procedures applicable to coal exploration operations on all lands except for Federal lands subject to the requirements of 43 CFR Parts 3480-3487.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 772.1, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-772.11. Notice requirements for exploration removing 250 tons of coal or less.

(a) Any person who intends to conduct coal exploration operations outside a permit area during which 250 tons or less of coal will be removed shall, before conducting the exploration, file with the division a written notice of intention to explore. Exploration which will take place on lands designated as unsuitable for surface coal mining operations under Subchapter VF, shall be subject to the permitting requirements under 4VAC25-130-772.12. Exploration conducted under a notice of intent shall be subject to the requirements prescribed under 4VAC25-130-772.13.

(b) The notice shall include-

- (1) The name, address, and telephone number of the person seeking to explore;
- (2) The name, address, and telephone number of the person's representative who will be present at, and responsible for, conducting the exploration activities;
- (3) A narrative describing the proposed exploration area and map, at a scale of 1:24,000 or larger, showing the proposed area of exploration and the general location of drillholes and trenches, existing and proposed roads, occupied dwellings, topographic features, bodies of surface water, and pipelines.
- (4) A statement of the period of intended exploration; and
- (5) A description of the method of exploration to be used and the practices that will be followed to protect the environment from adverse impacts of coal exploration and to reclaim the area of the exploration activities.
- (6) Any person who conducts coal exploration activities pursuant to this section which substantially disturb the natural land surface shall comply with Part 815.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 772.11, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-772.12. Permit requirements for exploration removing more than 250 tons of coal, or occurring on lands designated as unsuitable for surface coal mining operations.

(a) Exploration permit. Any person who intends to conduct coal exploration outside a permit area during which more than 250 tons of coal will be removed or which will take place on lands designated as unsuitable for surface mining under Subchapter VF shall, before conducting the exploration, submit an application and obtain written approval from the division in an exploration permit. Such exploration shall be subject to the requirements prescribed under 4VAC25-130-772.13 and 4VAC25-130-772.14.

(b) Application Information. Each application for an exploration permit shall contain, at a minimum, the following information:

- (1) The name, address, and telephone number of the applicant.
- (2) The name, address, and telephone number of the applicant's representative who will be present at, and responsible for conducting the exploration activities.
- (3) A narrative describing the proposed exploration area.
- (4) A narrative description of the methods and equipment to be used to conduct the exploration and reclamation.
- (5) An estimated timetable for conducting and completing each phase of the exploration and reclamation.
- (6) The estimated amount of coal to be removed and a description of the methods to be used to determine the amount.
- (7) A statement of why extraction of more than 250 tons of coal is necessary for exploration.
- (8) A description of:
 - (i) Cultural or historic resources listed in the National Register of Historic Places;
 - (ii) Cultural or historic resources known to be eligible for listing on the National Register for Historic Places; and
 - (iii) Known archeological resources located within the proposed exploration area.
- (9) A description of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 USC § 1531 et seq.) identified within the proposed exploration area.

(10) A description of the measures to be used to comply with the applicable requirements of Part 815.

(11) The name and address of the owner of record of the surface land and of the subsurface mineral estate of the area to be explored.

(12) A map or maps at a scale of 1:24,000 or larger, showing the areas of land to be disturbed by the proposed exploration and reclamation. The map shall specifically show existing roads, occupied dwellings, topographic and drainage features, bodies of surface water, and pipelines; proposed locations of trenches, roads, and other access routes and structures to be constructed; the location of proposed land excavations; the location of exploration holes or other drill holes or underground openings; the location of excavated earth or waste-material disposal areas; and the location of critical habitats of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 USC § 1531 et seq.)

(13) If the surface is owned by a person other than the applicant, a description of the basis upon which the applicant claims the right to enter that land for the purpose of conducting exploration and reclamation.

(14) For any lands listed in 4VAC25-130-761.11, a demonstration that, to the extent technologically and economically feasible, the proposed exploration activities have been designed to minimize interference with the values for which those lands were designated as unsuitable for surface coal mining operations. The application must include documentation of consultation with the owner of the feature causing the land to come under the protection of 4VAC25-130-761.11 and, when applicable, with the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of 4VAC25-130-761.11.

(c) Public notice and opportunity to comment. Public notice of the application and opportunity to comment shall be provided as follows:

(1) Upon submission of an administratively complete application to the division, the applicant shall place an advertisement in a newspaper of general circulation in the locality of the proposed exploration area. A copy of the newspaper advertisement and proof of publication shall be filed with the division no later than four weeks after the date of publication.

(2) The public notice shall state the name and address of the person seeking approval, the filing date of the application, that the application will be available for public inspection in the division's office in Big Stone Gap, the address of the division where written comments on the application may be submitted, the closing date of the comment period, and a description of the area of exploration.

(3) Any person having an interest which is or may be adversely affected shall have the right to file written comments on the application within 30 days after the date of publication of the newspaper notice.

(d) Decisions on applications for exploration.

(1) The division shall act upon an administratively complete application for a coal exploration permit and any written comments within a reasonable period of time. The approval of a coal exploration permit may be based only on a complete and accurate application.

(2) The division shall approve a complete and accurate application for a coal exploration permit filed in accordance with this Part if it finds, in writing, that the applicant has demonstrated that the exploration and reclamation described in the application will:

(i) Be conducted in accordance with this Part, Part 815 of this chapter, and the applicable provisions of the program;

(ii) Not jeopardize the continued existence of an endangered or threatened species listed pursuant to section 4 of the Endangered Species Act of 1973 (16 USC § 1533) or result in the destruction or adverse modification of critical habitat of those species; and

(iii) Not adversely affect any cultural or historic resources listed on the National Register of Historic Places, pursuant to the National Historic Preservation Act, as amended (16 USC § 470 et seq., 1976, Supp. V), unless the proposed exploration has been approved by both the division and the agency with jurisdiction over such matters.

(iv) With respect to exploration activities on any lands protected under 4VAC25-130-761.11, minimize interference, to the extent technologically and economically feasible, with the values for which those lands were designated as unsuitable for surface coal mining operations. Before making this finding, the division must provide reasonable opportunity to the owner of the feature causing the land to come under the protection of 4VAC25-130-761.11 and, when applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of 4VAC25-130-761.11, to comment on whether the finding is appropriate.

(3) Terms of approval issued by the division shall contain conditions necessary to ensure that the exploration and reclamation will be conducted in compliance with this Part, Part 815, and the Act.

(e) Notice and hearing.

(1) The division shall notify the applicant, the appropriate local governmental officials, and other commenters on the application, in writing, of its decision on the application. If the application is disapproved, the notice to the applicant shall include a statement of the reason for disapproval. Public notice of the decision on each application shall be posted by the division at the Court House in the county of the proposed exploration operations.

(2) Any person having an interest which is or may be adversely affected by a decision of the division pursuant to Paragraph (e)(1) of this section shall have the opportunity for administrative and judicial review as set forth in Part 775.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 772.12, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Volume 29, Issue 13, eff. March 27, 2013.

4VAC25-130-772.13. Coal exploration compliance duties.

(a) All coal exploration and reclamation activities that substantially disturb the natural land surface shall be conducted in accordance with the coal exploration requirements of this Part, Part 815, the regulatory program, and any exploration permit term or condition imposed by the division.

(b) Any person who conducts any coal exploration in violation of the provisions of this Part, Part 815, the regulatory program, or any exploration permit term or condition imposed by the division shall be subject to the provisions of Subchapter VL.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 772.13, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-772.14. Commercial use or sale.

(a) Except as provided under 4VAC25-130-772.14(b), any person who intends to commercially use or sell coal extracted during coal exploration operations under an exploration permit, shall first obtain a permit to conduct surface coal mining operations for those operations from the division under Parts 773 through 785.

(b) With the prior written approval of the division, no permit to conduct surface coal mining operations is required for the sale or commercial use of coal extracted during exploration operations if such sale or commercial use is for coal testing purposes only. The person conducting the exploration shall file an application for such approval with the division. The application shall demonstrate that the coal testing is necessary for the development of a surface coal mining and reclamation operation for which a surface coal mining operations permit application is to be submitted in the near future, and that the proposed commercial use or sale of coal extracted during exploration operations is solely for the purpose of testing the coal. The application shall contain the following:

- (1) The name of the testing firm and the locations at which the coal will be tested.
- (2) If the coal will be sold directly to, or commercially used directly by, the intended end user,

a statement from the intended end user, or if the coal is sold indirectly to the intended end user through an agent or broker, a statement from the agent or broker. The statement shall include:

- (i) The specific reason for the test, including why the coal may be so different from the intended user's other coal supplies as to require testing;
- (ii) the amount of coal necessary for the test and why a lesser amount is not sufficient; and
- (iii) a description of the specific tests that will be conducted.

(3) Evidence that sufficient reserves of coal are available to the person conducting exploration or its principals for future commercial use or sale to the intended end user, or agent or broker of such user identified above, to demonstrate that the amount of coal to be removed is not the total reserve, but is a sampling of a larger reserve.

(4) An explanation as to why other means of exploration, such as core drilling, are not adequate to determine the quality of the coal and/or the feasibility of developing a surface coal mining operation.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 772.14, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-772.15. Public availability of information.

(a) Except as provided in Paragraph (b) of this section, all information submitted to the Division under this Part shall be made available for public inspection and copying at the division office.

(b) The Division shall keep information confidential if the person submitting it requests in writing, at the time of submission, that it be kept confidential and the information concerns trade secrets or is privileged commercial or financial information relating to the competitive rights of the persons intending to conduct coal exploration.

(c) Information requested to be held as confidential under Paragraph (b) of this section shall not be made publicly available until after notice and opportunity to be heard is afforded persons both seeking and opposing disclosure of the information.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 772.15, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July

17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

Part 773

Requirements for Permits and Permit Processing

4VAC25-130-773.1. Scope and purpose.

This Part provides minimum requirements for permits and permit processing and covers obtaining and reviewing permits; coordinating with other laws; public participation; permit decision and notification; permit conditions; and permit term and right of renewal.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 773.1, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-773.11. Requirements to obtain permits.

(a) All operations. No person shall engage in or carry out any surface coal mining operations, unless such person has first obtained a permit issued by the division, except as provided for in Paragraph (b) of this section. A permittee need not renew the permit if no surface coal mining operations will be conducted under the permit and solely reclamation activities remain to be done. Obligations established under a permit continue until completion of surface coal mining and reclamation operations, regardless of whether the authorization to conduct surface coal mining operations has expired or has been terminated, revoked, or suspended.

(b) Continued operations under Federal program permits.

(1) A permit issued by the Director of the OSM pursuant to a Federal program for the Commonwealth shall be valid under any superseding State program approved by the Secretary.

(2) The Federal permittee shall have the right to apply to the division for a State permit to supersede the Federal permit.

(3) The division may review a permit issued pursuant to the superseded Federal program to determine that the requirements of the Act and the approved State program are not violated by the Federal permit, and to the extent that the approved State program contains additional requirements not contained in the Federal program for the State, the division shall--

(i) Promptly issue an order requiring the permittee to comply with such additional requirements within 60 days of the issuance of the order, unless the permittee demonstrates to the division that it is physically impossible to meet those additional requirements within 60 days, or unless the division agrees to a longer period under an established time schedule;

(ii) Notify the permittee, in writing, of the right to a hearing with respect to the order. A

request for hearing must be filed in writing with the division within 30 days of issuance of the order; and

(iii) Provide the permittee a reasonable time to conform ongoing surface coal mining and reclamation operations to the requirements of the State program.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 773.11, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-773.12. Regulatory coordination with other agencies.

To avoid duplication, the division shall provide for the coordination of review and issuance of permits for surface coal mining and reclamation operations with applicable requirements of the Endangered Species Act of 1973, as amended, (16 USC § 1531 et seq.); the Fish and Wildlife Coordination Act, as amended, (16 USC § 661 et seq.); the Migratory Bird Treaty Act of 1918, as amended, (16 USC § 703 et seq.); the National Historic Preservation Act of 1966, as amended (16 USC § 470 et seq.); the Bald Eagle Protection Act, as amended (16 USC § 668a); and Executive Order 11593.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 773.12, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-773.13. Public participation in permit processing.

(a) Filing and public notice.

(1) Upon submission of an administratively complete application, an applicant for a permit, significant revision of a permit under 4VAC25-130-774.13, or renewal of a permit under 4VAC25-130-774.15, shall place an advertisement in a local newspaper of general circulation in the locality of the proposed surface coal mining and reclamation operation at least once a week for four consecutive weeks. A copy of the advertisement as it will appear in the newspaper shall be submitted to the division. The advertisement shall contain, at a minimum, the following:

(i) The name and business address of the applicant.

(ii) A map or description which clearly shows or describes the precise location and boundaries of the proposed permit area and is sufficient to enable local residents to readily identify the proposed permit area. It may include towns, bodies of water, local landmarks, and any other information which would identify the location. The name of the U.S. Geological Survey 7.5 minute quadrangle map(s) which contains the area shown or described shall be stated; and if a map is used, it shall indicate the north direction.

(iii) The location where a copy of the application is available for public inspection.

(iv) The name and address of the division office where written comments, objections, or requests for informal conferences on the application may be submitted under Paragraphs (b) and (c) of this section.

(v) If an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road, except where public notice and hearing have previously been provided for this particular part of the road in accordance with 4VAC25-130-761.12(d); a concise statement describing the public road, the particular part to be relocated or closed, and the approximate timing and duration of the relocation or closing.

(vi) If the application includes a request for an experimental practice under 4VAC25-130-785.13, a statement indicating that an experimental practice is requested and identifying the regulatory provisions for which a variance is requested.

(2) The applicant shall make an application for a permit, significant revision under 4VAC25-130-774.13, or renewal of a permit under 4VAC25-130-774.15, available for the public to inspect and copy by filing a full copy of the application with the Clerk of the Circuit Court of the city or county where the mining is proposed to occur, or an accessible public office approved by the division. This copy of the application need not include confidential information exempt from disclosure under Paragraph (d) of this section. The application required by this Paragraph shall be filed by the first date of newspaper advertisement of the application. The applicant shall file any changes to the application with the public office at the same time the change is submitted to the division.

(3) Upon receipt of an administratively complete application for a permit, a significant revision to a permit under 4VAC25-130-774.13, or a renewal of a permit under 4VAC25-130-774.15, the division shall issue written notification indicating the applicant's intention to mine the described tract of land, the application number or other identifier, the location where the copy of the application may be inspected, and the location where comments on the application may be submitted. The notification shall be sent to--

(i) Local governmental agencies with jurisdiction over or an interest in the area of the proposed surface coal mining and reclamation operation, including but not limited to planning agencies, sewage and water treatment authorities, water companies; and

(ii) All Federal or State governmental agencies with authority to issue permits and licenses

applicable to the proposed surface coal mining and reclamation operation and which are part of the permit coordinating process developed in accordance with 4VAC25-130-773.12; or those agencies with an interest in the proposed operation, including the U.S. Department of Agriculture, Natural Resources Conservation Service district office, the local U.S. Army Corps of Engineers district engineer, the National Park Service, State and Federal fish and wildlife agencies, and the historic preservation officer.

(b) Comments and objections on permit application.

(1) Within 30 days after notification, written comments or objections on an application for a permit, significant revision to a permit under 4VAC25-130-774.13, or renewal of a permit under 4VAC25-130-774.15, may be submitted to the division by public entities notified under Paragraph (a)(3) of this section with respect to the effects of the proposed mining operations on the environment within their areas of responsibility.

(2) Written objections to an application for a permit, significant revision to a permit under 4VAC25-130-774.13, or renewal of a permit under 4VAC25-130-774.15, may be submitted to the division by any person having an interest which is or may be adversely affected by the decision on the application, or by an officer or head of any Federal, State, or local government agency or authority, within 30 days after the last publication of the newspaper notice required by Paragraph (a) of this section.

(3) The division shall upon receipt of such written comments or objections--

(i) Transmit a copy of the comments or objections to the applicant; and

(ii) File a copy for public inspection at the same public office where the application is filed.

(c) Informal conferences.

(1) Any person having an interest which is or may be adversely affected by the decision on the application, or an officer or a head of a Federal, State, or local government agency, may request in writing that the division hold an informal conference on the application for a permit, significant revision to a permit under 4VAC25-130-774.13, or renewal of a permit under 4VAC25-130-774.15. The request shall--

(i) Briefly summarize the issues to be raised by the requestor at the conference;

(ii) State whether the requestor desires to have the conference conducted in the locality of the proposed operation; and

(iii) Be filed with the division no later than 30 days after the last publication of the newspaper advertisement required under Paragraph (a) of this section.

(2) Except as provided in Paragraph (c)(3) of this section, if an informal conference is requested in accordance with Paragraph (c)(1) of this section, the division shall hold an informal conference within a reasonable time following the receipt of the request. The informal conference shall be conducted as follows:

(i) If requested under Paragraph (c)(1)(ii) of this section, it shall be held in the locality of the proposed surface coal mining and reclamation operation.

(ii) The date, time, and location of the informal conference shall be sent to the applicant and other parties to the conference and advertised by the division in a newspaper of general circulation in the locality of the proposed surface coal mining and reclamation operation at least 2 weeks before the scheduled conference.

(iii) If requested in writing by a conference requestor at a reasonable time before the conference, the division may arrange with the applicant to grant parties to the conference access to the proposed permit area and, to the extent that the applicant has the right to grant access to it, to the adjacent area prior to the date of the conference for the purpose of gathering information relevant to the conference.

(iv) The conference shall be conducted by a representative of the division, who may accept oral or written statements and any other relevant information from any party to the conference. An electronic or stenographic record shall be made of the conference, unless waived by all the parties. The record shall be maintained and shall be accessible to the parties of the conference until final release of the applicant's performance bond or other equivalent guarantee pursuant to Subchapter VJ.

(3) If all parties requesting the informal conference withdraw their request before the conference is held, the informal conference may be canceled.

(4) Informal conferences held in accordance with this section may be used by the division as the public hearing required under 4VAC25-130-761.12(d) on proposed relocation or closing of public roads.

(d) Public availability of permit applications.

(1) General availability. Except as provided in Paragraphs (d)(2) or (d)(3) of this section, all applications for permits; revisions; renewals; and transfers, assignments or sales of permit rights on file with the Division shall be available, at reasonable times, for public inspection and copying.

(2) Limited availability. Except as provided in Paragraph (d)(3)(i) of this section, information pertaining to coal seams, test borings, core samplings, or soil samples in an application shall be made available to any person with an interest which is or may be adversely affected. Information subject to this Paragraph shall be made available to the public when such information is required to be on public file pursuant to State law.

(3) Confidentiality. The division shall provide procedures, including notice and opportunity to be heard for persons both seeking and opposing disclosure, to ensure confidentiality of qualified confidential information, which shall be clearly identified by the applicant and submitted separately from the remainder of the application. Confidential information is limited to--

- (i) Information that pertains only to the analysis of the chemical and physical properties of the coal to be mined, except information on components of such coal which are potentially toxic in the environment;
- (ii) Information required under Section 45.1-236 of the Act that is not on public file pursuant to State law and that the applicant has requested in writing to be held confidential;
- (iii) Information on the nature and location of archeological resources on public land and Indian land as required under the Archeological Resources Protection Act of 1979 (Pub. L. 96-95, 93 Stat. 721, 16 USC § 470).

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 773.13, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-773.15. Review of permit applications.

(a) General.

- (1) The division shall review the application for a permit, revision, or renewal; written comments and objections submitted; information from the AVS; and records of any informal conference or hearing held on the application and issue a written decision, within a reasonable time, either granting, requiring modification of, or denying the application. If an informal conference is held under 4VAC25-130-773.13(c), the decision shall be made within 60 days of the close of the conference.
- (2) The applicant for a permit or revision of a permit shall have the burden of establishing that the application is in compliance with all the requirements of the regulatory program.
- (3) The division shall review the information submitted under 4VAC25-130-778.13 and 4VAC25-130-778.14 regarding the applicant's or operator's permit histories, business structure, and ownership and control relationships.
- (4) If the applicant or operator does not have any previous mining experience, the division may conduct additional reviews to determine if someone else with surface coal mining experience controls or will control the mining operation.

(b) Review of violations.

- (1) Based on available information concerning federal and state failure-to-abate cessation orders, unabated federal and state imminent harm cessation orders, delinquent civil penalties issued pursuant to § 518 of the federal Act and § 45.1-246 of the Code of Virginia, bond forfeitures where violations upon which the forfeitures were based have not been corrected,

delinquent abandoned mine reclamation fees, and unabated violations of federal and state laws, rules, and regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, the division shall not issue the permit if any surface coal mining and reclamation operation directly owned or controlled by either the applicant or operator is currently in violation of the federal Act, this chapter, or any other law, rule or regulation referred to in this subdivision; or if a surface coal mining and reclamation operation indirectly owned or controlled by the applicant or operator has an unabated or uncorrected violation and the applicant's or operator's control was established or the violation was cited after November 2, 1988. In the absence of a failure-to-abate cessation order, the division may presume that a notice of violation issued pursuant to 4VAC25-130-843.12 or under a federal or state program has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation, except where evidence to the contrary is set forth in the permit application or the AVS, or where the notice of violation is issued for nonpayment of abandoned mine reclamation fees or civil penalties. If a current violation exists, the division shall require the applicant or operator, before the issuance of the permit, to either

- (i) Submit to the division proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation; or
- (ii) Establish for the division that the applicant, or operator, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. If the initial judicial review authority under 4VAC25-130-775.13 affirms the violation, then the applicant shall within 30 days of the judicial action submit the proof required under subdivision (b)(1)(i) of this section.

(2) Any permit that is issued on the basis of proof submitted under subdivision (b)(1)(i) of this section that a violation is in the process of being corrected, or pending the outcome of an appeal described in subdivision (b)(1)(ii) of this section, shall be conditionally issued.

(3) If the division makes a finding that the applicant or the operator specified in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of the Act of such nature and duration, and with resulting irreparable damage to the environment as to indicate an intent not to comply with the Act, no permit shall be issued. Before such a finding becomes final, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in 4VAC25-130-775.11.

(4) (i) Subsequent to October 24, 1992, the prohibitions of subsection (b) of this section regarding the issuance of a new permit shall not apply to any violation that:

- (A) Occurs after that date;
- (B) Is unabated; and
- (C) Results from an unanticipated event or condition that arises from a surface coal

mining and reclamation operation on lands that are eligible for remining under a permit held by the person making application for the new permit.

(ii) For permits issued under 4VAC25-130-785.25 an event or condition shall be presumed to be unanticipated for the purposes of this subdivision if it:

- (A) Arose after permit issuance;
- (B) Was related to prior mining; and
- (C) Was not identified in the permit.

(c) Written findings for permit application approval. No permit application or application for a significant revision of a permit shall be approved unless the application affirmatively demonstrates and the division finds, in writing, on the basis of information set forth in the application or from information otherwise available that is documented in the approval, the following:

- (1) The application is complete and accurate and the applicant has complied with all requirements of the Act and this chapter.
- (2) The applicant has demonstrated that reclamation as required by the Act and this chapter can be accomplished under the reclamation plan contained in the permit application.
- (3) The proposed permit area is:
 - (i) Not within an area under study or administrative proceedings under a petition, filed pursuant to Part 764 of this chapter and 30 CFR Part 769, to have an area designated as unsuitable for surface coal mining operations, unless the applicant demonstrates that before January 4, 1977, he has made substantial legal and financial commitments in relation to the operation covered by the permit application; or
 - (ii) Not within an area designated as unsuitable for mining pursuant to Parts 762 and 764 of this chapter, or subject to the prohibitions or limitations of 4VAC25-130-761.11 and 4VAC25-130-761.12.
- (4) For mining operations where the private mineral property to be mined has been severed from the private surface property, the applicant has submitted to the division the documentation required under 4VAC25-130-778.15(b).
- (5) The division has made an assessment of the probable cumulative impacts of all anticipated coal mining on the hydrologic balance in the cumulative impact area and has determined that the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.
- (6) The applicant has demonstrated that any existing structure will comply with 4VAC25-130-701.11(d) and 4VAC25-130-773.16, and the applicable performance standards of the initial regulatory program or Subchapter VK.
- (7) The applicant has paid all reclamation fees, civil penalty assessments, Pool Bond Fund

fees, and anniversary fees, from previous and existing operations as required by this chapter.

(8) The applicant has satisfied the applicable requirements of Part 785 of this chapter.

(9) The applicant has, if applicable, satisfied the requirements for approval of a long-term, intensive agricultural postmining land use, in accordance with the requirements of 4VAC25-130-816.111(d) or 4VAC25-130-817.111(d).

(10) The operation would not affect the continued existence of endangered or threatened species or result in destruction or adverse modification of their critical habitats, as determined under the Endangered Species Act of 1973 (16 USC § 1531 et seq.).

(11) The division has taken into account the effect of the proposed permitting action on properties listed on and eligible for listing on the National Register of Historic Places. This finding may be supported in part by inclusion of appropriate permit conditions or changes in the operation plan protecting historic resources, or a documented decision that the division has determined that no additional protection measures are necessary.

(12) For a proposed re-mining operation where the applicant intends to reclaim in accordance with the requirements of 4VAC25-130-816.106 or 4VAC25-130-817.106, the site of the operation is a previously mined area as defined in 4VAC25-130-700.5.

(13) The applicant or the permittee specified in the application, has not owned or controlled a surface mining and reclamation operation for which the permit has been revoked and/or the bond forfeited pursuant to the Code of Virginia or any federal law, rule or regulation, or any law, rule or regulation enacted pursuant to federal or state law pertaining to air or water environmental protection and surface coal mining activities in any other state unless reinstated. Applicable Virginia reinstatement requirements may be found in 4VAC25-130-800.52.

(14) For permits to be issued under 4VAC25-130-785.25 the permit application must contain:

(i) Lands eligible for re-mining;

(ii) An identification of the potential environmental and safety problems related to prior mining activity which could reasonably be anticipated to occur at the site; and

(iii) Mitigation plans to sufficiently address these potential environmental and safety problems so that reclamation as required by the applicable requirements of this chapter can be accomplished.

(d) Performance bond submittal. If the division decides to approve the application, it shall require that the applicant file the performance bond or provide other equivalent guarantee before the permit is issued, in accordance with the provisions of Subchapter VJ.

(e) Final compliance review. After an application is approved, but before the permit is issued, the division shall reconsider its decision to approve the application, based on the compliance review required by subdivision (b)(1) of this section in light of any new information submitted under 4VAC25-130-778.13 (j) or 4VAC25-130-778.14 (d).

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 773.15, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 14, Issue 5, eff. December 24, 1997; Errata, 14:10 VA.R. 1751 February 2, 1998; Volume 29, Issue 13, eff. March 27, 2013.

4VAC25-130-773.16. Criteria for permit approval or denial; existing structures.

(a) No application for a permit or revision which proposes to use an existing structure in connection with or to facilitate the proposed surface coal mining and reclamation operation shall be approved, unless the applicant demonstrates and the division finds, in writing, on the basis of information set forth in the complete application that:

(1) If the applicant proposes to use an existing structure in accordance with the exemption provided in 4VAC25-130-701.11(d)(1)(i):

- (i) The structure meets the performance standards of the Act and Subchapter VK; and
- (ii) No significant harm to the environment or public health or safety will result from use of the structure.

(2)(i) If the applicant proposes to use an existing structure in accordance with the exemption provided in 4VAC25-130-701.11(d)(1)(ii):

- (A) The structure meets the performance standards of the Act and the initial regulatory program;
- (B) No significant harm to the environment or public health or safety will result from use of the structure; and
- (C) The performance standards of the initial regulatory program are at least as stringent as the performance standards of Subchapter VK.

(ii) If the division finds that the structure meets the criteria of 4VAC25-130-701.11(d)(1)(ii), the division shall require the applicant to submit a compliance plan for modification or reconstruction of the structure and shall find prior to the issuance of the permit that:

- (A) The modification or reconstruction of the structure will bring the structure into compliance with the design and performance standards of Subchapter VK;
- (B) The risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction; and
- (C) The applicant will monitor the structure to determine compliance with the

performance standards of Subchapter VK.

(b) Should the division find that the existing structure cannot be reconstructed without causing significant harm to the environment or public health or safety, the applicant will be required to abandon the existing structure. The structure shall not be used for or to facilitate surface coal mining operations after the effective date of issuance of the permit. Abandonment of the structure shall proceed on a schedule approved by the division in compliance with 4VAC25-130-816.132 or 4VAC25-130-817.132.

(c) An existing structure shall be deemed to meet the performance standards of the Act and Subchapter VK, if it meets the standards of this Subparagraph.

(1) General standards. The existing structure shall meet the following general standards:

(i) Land use restoration. The existing structure shall be capable of being restored to a satisfactory postmining land use in accordance with the requirements of 4VAC25-130-816.133 and 4VAC25-130-817.133, which use or uses shall not present any actual or probable hazard to public health or safety or pose any actual or probable threat of water diminution or pollution.

(ii) Topsoil storage. Stockpiled topsoil and other substitute or supplemental materials shall be placed on a stable area and protected from wind and water erosion, unnecessary compaction, and contaminants which lessen the capability of the material to support vegetation when redistributed.

(iii) Surface area stabilization. All surface areas shall be stabilized and protected to control erosion and attendant air and water pollution.

(iv) Acid and toxic-forming materials. Drainage from acid-forming, toxic-forming, or otherwise harmful materials shall not cause pollution of ground or surface waters and shall minimize adverse effects on plant growth and land uses.

(v) Hydrologic balance: Water quality standards and effluent limitations.

(A) Federal and State water quality statutes, regulations, standards, or effluent limitations shall not be violated.

(B) Discharges of water from disturbed areas shall comply with the effluent limitations of 4VAC25-130-816.42 or 4VAC25-130-817.42.

(C) No land within 100 feet of a perennial stream or an intermittent stream in accordance with 4VAC25-130-816.57 or 4VAC25-130-817.57 shall be disturbed by surface mining activities; unless the water quantity and quality within 100 feet of the surface mining activities are not adversely affected, the division specifically authorizes surface mining activities closer to or through such a stream upon a finding that the original stream channel will be restored, and the requirements of Subparagraph (c)(5) of this section are satisfied.

(vi) Off-site protection. Areas outside the permit area shall be protected from slides or damage.

(vii) Protection of fish, wildlife, and related environmental values. Disturbances and adverse impacts on fish, wildlife, and related environmental values shall be minimized using the best technology currently available and enhancement of such resources shall be achieved where practicable.

(viii) Prevention of health and safety and fire hazards. Fire hazards and other conditions which constitute a hazard to the health and safety of the public shall be avoided. Combustible materials shall be compacted, buried, disposed or otherwise treated to prevent contamination of groundwater and to prevent sustained combustion.

(2) Casing and sealing of underground openings.

(i) Sealing of drilled holes. Each exploration hole, other drill or borehole, well or other exposed underground opening shall be cased, lined, sealed, or otherwise managed to prevent acid or other toxic drainage from entering ground or surface waters; to minimize disturbance to the prevailing hydrologic balance; and to assure the safety of people, livestock, fish and wildlife, and machinery in the permit area and adjacent area.

Use of a drilled hole or borehole or monitoring well as a water well must meet the applicable provisions of 4VAC25-130-816.41 and 4VAC25-130-817.41. These sections do not apply to holes solely drilled and used for blasting.

(ii) Temporary sealing of drilled holes. Each exploration hole, other drillhole or borehole, well, and other exposed underground opening which has been identified for use to return coal processing waste or water to underground workings, or to be used to monitor groundwater conditions, shall be temporarily sealed until actual use.

(iii) Temporary sealing of underground mine entries. Each underground mine entry which is temporarily inactive, but has a further projected useful service, shall be protected by barricades or other covering devices, fenced, and posted with signs, to prevent access into the entry and to identify the hazardous nature of the opening.

(3) Standards for permanent impoundments. Permanent impoundments shall meet the following standards:

(i) The quality of the impounded water shall be suitable on a permanent basis for its intended use, and discharge of water from the impoundment shall not degrade the quality of receiving waters to less than the water quality standards established pursuant to applicable State and Federal laws.

(ii) The level of water shall be sufficiently stable to support the intended use.

(iii) Adequate safety and access to the impounded water shall be provided for proposed water users.

(iv) Water impoundments shall not result in the diminution of the quality or quantity of water used by adjacent or surrounding landowners for agricultural, industrial,

recreational, or domestic uses.

(v) The impoundment shall achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under Public Law 83-566 (16 USC § 1006).

(vi) The size of the impoundment shall be adequate for its intended purposes.

(vii) The impoundment shall be suitable for the approved postmining land use.

(viii) Perimeter slopes shall be stable and protected to minimize surface erosion.

(4) Sediment control measures.

(i) Appropriate sediment control measures shall:

(A) Prevent, to the extent possible using the best technology currently available, additional contributions of sediment to streamflow or to runoff outside the permit area.

(B) Minimize erosion to the extent possible.

(C) Meet the more stringent of applicable State or Federal effluent limitations.

(ii) Sedimentation basins shall achieve necessary dam safety and stability with an adequate margin of safety compatible with structures constructed under 4VAC25-130-816.46 and 4VAC25-130-817.46 as specified by the division; shall have an adequate storage volume and detention time which will achieve and maintain the effluent limitations; and shall be capable of safely discharging the runoff from a 25-year, 6-hour precipitation event or larger event specified by the division. Perimeter slopes shall be stable and protected to minimize surface erosion.

(5) Standards for diversion structures.

(i) Diversions shall prevent additional contributions of suspended solids to streamflow and to runoff outside the permit area, to the extent possible using the best technology currently available.

(ii) Diversions shall not divert water into underground mines, unless approved by the division and the standards of 4VAC25-130-816.43 are met.

(iii) Diversions shall not increase the potential for landslides.

(iv) Stream channel diversions shall comply with all of the requirements of this Subparagraph (c)(5), shall comply with local, State, and Federal statutes and regulations, and shall be in accordance with Subparagraph (1)(v)(C) of this section.

(6) Standards for discharge structures. Discharge structures shall reduce erosion and avoid deepening or enlargement of stream channels, and minimize disturbances of the hydrologic balance.

(7) Standards for temporary impoundments. Temporary impoundments shall achieve necessary stability with an adequate margin of safety and shall be capable of safely

discharging the runoff from a 25-year, 6-hour precipitation event or larger event specified by the division. Perimeter slopes shall be stable and protected to minimize surface erosion.

(8) Standards for disposal of excess spoil. An existing excess spoil disposal area may be used for the disposal of additional excess spoil only if the facility is capable of meeting the following standards:

(i) Leachate and surface runoff from the fill shall not degrade surface or groundwaters.

(ii) The fill shall achieve necessary stability with an adequate margin of safety.

(iii) The land mass designated as the disposal area shall be within the permit area and suitable for reclamation and revegetation compatible with the natural surroundings. Spoil material shall not be deposited on any part of the operations located outside the permit area.

(iv) Appropriate surface and internal drainage systems and diversion ditches shall prevent spoil erosion and mass movement.

(v) The spoil disposal area shall have slope protection to minimize surface erosion.

(vi) The spoil disposal area shall be certified by a qualified registered professional engineer as being in conformance with professional standards.

(vii) Placement of additional spoil shall be in accordance with the applicable requirements of 4VAC25-130-816.71 through 4VAC25-130-816.75 and 4VAC25-130-817.71 through 4VAC25-130-817.75 as approved by the division.

(viii) The final configuration of the spoil disposal area shall be compatible with the natural drainage pattern and surroundings and suitable for the intended uses.

(9) Standards for coal processing waste banks. An existing coal processing waste bank may be used for the disposal of additional coal processing waste only if the facility is capable of meeting the following standards:

(i) The coal processing waste bank shall not adversely affect surface or groundwater quantity or quality or vegetation.

(ii) Necessary stability with an adequate margin of safety shall be achieved.

(iii) The coal processing waste bank shall be suitable for reclamation and revegetation compatible with the natural surroundings.

(iv) The coal processing waste bank shall not constitute a hazard to the health and safety of the public.

(v) Surface and internal drainage systems and diversion ditches shall be adequate to minimize erosion and prevent mass movement.

(vi) Slope protection shall be adequate to minimize surface erosion.

(vii) The coal processing waste bank shall be certified by a qualified registered professional engineer as being in conformance with professional standards.

(viii) Placement of additional coal processing waste shall be in accordance with the applicable requirements of 4VAC25-130-816.81 through 4VAC25-130-816.84 and 4VAC25-130-817.81 through 4VAC25-130-817.84 as approved by the division.

(10) Standards for disposal of noncoal wastes. Disposal of noncoal wastes shall ensure that leachate and surface runoff does not degrade surface or groundwater, fires are prevented, that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings, and that applicable local, State, and Federal laws and regulations are satisfied.

(11) Standards for coal processing waste: dams and embankments. Dams and embankments constructed of coal processing waste shall meet the requirements of 4VAC25-130-816.81 through 4VAC25-130-816.84 and 4VAC25-130-817.81 through 4VAC25-130-817.84.

(12) Standards for roads. Roads shall:

(i) Control or minimize erosion and siltation, air and water pollution, and damage to public or private property.

(ii) Minimize damage to fish, wildlife, and related environmental values using the best technology currently available.

(iii) Minimize additional contributions of suspended solids to streamflow or runoff outside the permit area using the best technology currently available. Any such contributions shall not be in excess of limitations of State and Federal law.

(iv) Not be located in the channel of an intermittent or perennial stream unless specifically approved by the division.

(v) Not contain stream fords unless they are specifically approved by the division and not adversely affect stream sedimentation or fish, wildlife, and related environmental values.

(vi) Have adequate drainage and have a water-control system that can safely pass the peak runoff from a 10-year, 6-hour precipitation event or other event if required by the division.

(13) Standards for other transportation facilities. Railroad loops, spurs, sidings, surface conveyor systems, chutes, aerial tramways, or other transportation facilities shall:

(i) Prevent, to the extent possible using the best technology currently available:

(A) Damage to fish, wildlife, and related environmental values.

(B) Additional contributions of suspended solids to streamflow or runoff outside the permit area. Any such contributions shall not be in excess of limitations of State or Federal law.

- (ii) Control and minimize diminution or degradation of water quality and quantity.
- (iii) Control and minimize erosion and siltation.
- (iv) Control and minimize air pollution.
- (v) Prevent damage to public or private property.

(14) Standards for support facilities and utility installations. Support facilities required for, or used incidentally to, the operation of the mine including, but not limited to, mine buildings, coal loading facilities, fan buildings, hoist buildings, sheds, shops, and other buildings, shall prevent or control erosion and siltation, water pollution, and damage to public or private property. In addition to the applicable performance standards of Parts 816 and 817 and this section, support facilities shall prevent, to the extent possible using the best technology currently available:

- (i) Damage to fish, wildlife, and related environmental values.
- (ii) Additional contributions of suspended solids to streamflow or runoff outside the permit area. Any such contributions shall not be in excess of limitations of State or Federal law.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 773.16, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-773.17. Permit conditions.

Each permit issued by the division shall be subject to the following conditions:

- (a) The permittee shall conduct surface coal mining and reclamation operations only on those lands that are specifically designated as the permit area on the maps submitted with the application and authorized for the term of the permit and that are subject to the performance bond or other equivalent guarantee in effect pursuant to Subchapter VJ.
- (b) The permittee shall conduct all surface coal mining and reclamation operations only as described in the approved application, except to the extent that the division otherwise directs in the permit.
- (c) The permittee shall comply with the terms and conditions of the permit, all applicable performance standards of the Act, and the requirements of this chapter.
- (d) Without advance notice, delay, or a search warrant, upon presentation of appropriate credentials, the permittee shall allow the authorized representatives of the Secretary and the Director to--

- (1) Have the right of entry provided for in 4VAC25-130-840.12; and
 - (2) Be accompanied by private persons for the purpose of conducting an inspection in accordance with Parts 840 and 842, when the inspection is in response to an alleged violation reported to the division by the private person.
- (e) The permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition of the permit, including, but not limited to--
- (1) Any accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance;
 - (2) Immediate implementation of measures necessary to comply; and
 - (3) Warning, as soon as possible after learning of such noncompliance, any person whose health and safety is in imminent danger due to the noncompliance.
- (f) As applicable, the permittee shall comply with 4VAC25-130-701.11(d), 30 CFR Subchapter B, or Subchapter VK of this chapter for compliance, modification, or abandonment of existing structures.
- (g) The operator shall pay all reclamation fees required by 30 CFR Subchapter R for coal produced under the permit for sale, transfer or use, in the manner required by that Subchapter.
- (h) Within thirty days after a cessation order is issued under 4VAC25-130-843.11 or 30 CFR 843.11, for operations conducted under the permit, except where a stay of the cessation order is granted and remains in effect the permittee shall either submit to the division the following information, current to the date the cessation order was issued, or notify the division in writing that there has been no change since the immediately preceding submittal of such information:
- (1) Any new information needed to correct or update the information previously submitted to the division by the permittee under 4VAC25-130-778.13(c); or
 - (2) If not previously submitted, the information required from a permit applicant by 4VAC25-130-778.13(c).

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 773.17, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-773.19. Permit issuance and right of renewal.

(a) Decision. If the application is approved, the permit shall be issued upon submittal of a performance bond in accordance with Subchapter VJ. If the application is disapproved, specific reasons therefore shall be set forth in the notification required by Paragraph (b) of this section.

(b) Notification. The division shall issue written notification of the decision to the following persons and entities:

- (1) The applicant, each person who files comments or objections to the permit application, and each party to an informal conference.
- (2) The local governmental officials in the local political subdivision in which the land to be affected is located within 10 days after the issuance of a permit, including a description of the location of the land.
- (3) The local OSM office.

(c) Permit term. Each permit shall be issued for a fixed term of 5 years or less, unless the requirements of 4VAC25-130-778.17 are met.

(d) Right of renewal. Permit application approval shall apply to those lands that are specifically designated as the permit area on the maps submitted with the application and for which the application is complete and accurate. Any valid permit issued in accordance with Paragraph (a) of this section shall carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit, in accordance with 4VAC25-130-774.15.

(e) Initiation of operations.

(1) A permit shall terminate if the permittee has not begun the surface coal mining and reclamation operation covered by the permit within 3 years of the issuance of the permit.

(2) The division may grant a reasonable extension of time for commencement of these operations, upon receipt of a written statement showing that such an extension of time is necessary, if--

(i) Litigation precludes the commencement or threatens substantial economic loss to the permittee; or

(ii) There are conditions beyond the control and without the fault or negligence of the permittee.

(3) With respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permittee shall be deemed to have commenced surface mining operations at the time that the construction of the synthetic fuel or generating facility is initiated.

(4) Extensions of time granted by the division under this Paragraph shall be specifically set forth in the permit, and notice of the extension shall be made public by the division.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 773.19, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-773.20. Improvidently issued permits; general procedures.

(a) Permit review. If the division has reason to believe that it improvidently issued a surface coal mining and reclamation permit, it shall review the circumstances under which the permit was issued, using the criteria in subdivision (b) of this section. Where the division finds that the permit was improvidently issued, it shall comply with subdivision (c) of this section.

(b) Review criteria. The division shall find that a surface coal mining and reclamation permit was improvidently issued if:

- (1) Under the violations review criteria of this chapter at the time the permit was issued:
 - (i) The division should not have issued the permit because of an unabated violation or a delinquent penalty or fee; or
 - (ii) The permit was issued on the presumption that a notice of violation was in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation, but a cessation order subsequently was issued; and
- (2) The violation, penalty or fee:
 - (i) Remains unabated or delinquent; and
 - (ii) Is not the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; and
- (3) Where the permittee was linked to the violation, penalty or fee through ownership or control, under the violations review criteria of this chapter at the time the permit was issued an ownership or control link between the permittee and the person responsible for the violation, penalty or fee still exists, or where the link was severed the permittee continues to be responsible for the violation, penalty or fee.

(c) Remedial measures. If the division, under subdivision (b) of this section, finds that because of an unabated violation or a delinquent penalty or fee a permit was improvidently issued, it shall use one or more of the following remedial measures:

- (1) Implement, with the cooperation of the permittee or other person responsible, and of the responsible agency, a plan for abatement of the violation or a schedule for payment of the penalty or fee;
- (2) Impose on the permit a condition requiring that in a reasonable period of time the permittee or other person responsible abate the violation or pay the penalty or fee;
- (3) Serve the permittee with a preliminary finding that shall be based on evidence sufficient to

establish a prima facie case that the permit was improvidently issued. The finding shall inform the permittee that the permit may be suspended or rescinded under 4VAC25-130-773.21 if the violation is not abated or the penalty or fee is not paid.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 773.20, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Volume 29, Issue 13, eff. March 27, 2013.

4VAC25-130-773.21. Improvidently issued permits; rescission procedures.

If the division, under 4VAC25-130-773.20 (c) (3), elects to suspend or rescind an improvidently issued permit, it shall serve on the permittee a notice of proposed suspension and rescission which includes the reasons for the finding of the division under 4VAC25-130-773.20 (b) and states that:

- (a) Automatic suspension and rescission. After a specified period of time not to exceed 90 days the permit automatically will become suspended, and not to exceed 90 days thereafter rescinded, unless within those periods the permittee submits proof, and the division finds, that:
 - (1) The finding of the division under 4VAC25-130-773.20 (b) was erroneous;
 - (2) The permittee or other person responsible has abated the violation on which the finding was based, or paid the penalty or fee, to the satisfaction of the responsible agency;
 - (3) The violation, penalty or fee is the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; or
 - (4) Since the finding was made, the permittee has severed any ownership or control link with the person responsible for, and does not continue to be responsible for, the violation, penalty or fee:
- (b) Cessation of operations. After service of the notice of permit suspension or rescission, the permittee shall cease all surface coal mining and reclamation operations under the permit as set forth in the notice, except for violation abatement and for reclamation and other environmental protection measures as required by the division;
- (c) A person may challenge an ownership or control listing or finding by submitting to the division a written explanation of the basis for the challenge, along with any evidence or explanatory materials that substantiates that the person did not or does not own or control the entire surface coal mining operation or relevant portion or aspect thereof. The person

may request that any information submitted to the division under this section be held as confidential if it is not required to be made public under the Act. The division shall review the information and render a written decision regarding the person's ownership or control listing or link within 60 days from receipt of the challenge; and

(d) Right to appeal. The permittee or person aggrieved by the division's notice or decision may file an appeal for administrative review of the notice or decision under subdivision (c) of 4VAC25-130-775.11 or under the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 773.21, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 23, Issue 13, eff. April 4, 2007; Volume 29, Issue 13, eff. March 27, 2013.

Part 774

Review; Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights

4VAC25-130-774.1. Scope and purpose.

This Part provides requirements for review; revision; renewal; and transfer, assignment, or sale of permit rights.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 774.1, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-774.11. Division review of permits.

(a) The division shall review each permit issued and outstanding during the term of the permit. This review shall occur not later than the middle of each permit term and as follows:

- (1) Permits with a term longer than 5 years shall be reviewed no less frequently than the permit midterm or every 5 years, whichever is more frequent.
- (2) Permits with variances granted in accordance with 4VAC25-130-785.14 (mountaintop removal) and 4VAC25-130-785.18 (variance for delay in contemporaneous reclamation requirement in combined surface and underground mining operations) shall be reviewed no later than 3 years from the date of issuance of the permit unless, for variances issued in

accordance with 4VAC25-130-785.14, the permittee affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the permit.

(3) Permits containing experimental practices issued in accordance with 4VAC25-130-785.13 and permits with a variance from approximate original contour requirements in accordance with 4VAC25-130-785.16 shall be reviewed as set forth in the permit or at least every 2 ½ years from the date of issuance as required by the division, in accordance with 4VAC25-130-785.13(g) and 4VAC25-130-785.16(c), respectively.

(b) After the review required by Paragraph (a) of this section, or at any time, the division may order reasonable revision of a permit in accordance with 4VAC25-130-774.13 to ensure compliance with the Act and the regulatory program.

(c) Any order of the division requiring revision of a permit shall be based upon written findings and shall be subject to the provisions for administrative and judicial review in Part 775. Copies of the order shall be sent to the permittee.

(d) Permits may be suspended or revoked in accordance with Subchapter VL.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 774.11, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-774.12. Post-permit issuance requirements.

A. For purposes of future permit eligibility determinations and enforcement actions, the division will utilize the AVS to retrieve and enter appropriate data regarding ownership, control, and violation information. The division shall enter into the AVS:

Information	Within 30 days after
(1) Permit records	the permit is issued or subsequent changes made
(2) Unabated or uncorrected violations	the abatement or correction period for a violation expires
(3) Unpaid final civil penalties, charges, taxes, or fees	the required due payment date
(4) Changes in violation status	abatement, correction or termination of a violation or a final decision from an administrative or judicial review proceeding

B. In the event the permittee is issued enforcement action under 4VAC25-130-843.11 and fails to timely comply with the order's remedial measures, the division shall instruct the permittee to

provide or update all the information required by 4VAC25-130-778.13. However, the permittee would not be required to submit this information if a court of competent jurisdiction has granted a stay of the cessation order and the stay remains in effect.

C. The permittee shall notify the division within 60 days of any addition, departure, or change in position of any person identified under 4VAC25-130-778.13. The permittee shall provide the date of such addition, departure, or change of such person.

D. Should the division discover that the permittee or a person listed in an ownership or control relationship with the permittee owns or controls an operation with an unabated or uncorrected violation, it will determine whether enforcement action is appropriate under 4VAC25-130-843 and 4VAC25-130-846 or other applicable provisions. The division may issue a preliminary finding of permit ineligibility under § 45.1-238 (c) of the Act if it finds that the person had control relationships and violations that would have made the person ineligible for a permit under 4VAC25-130-773.15. The finding shall be in accordance with 4VAC25-130-773.20 (c) (3).

E. If a determination of permit ineligibility is rendered by the division, the person would have 30 days from service of the written finding to submit any information that would tend to demonstrate the person's lack of ownership or control of the surface coal mining operation. The division would issue a final determination regarding the permit eligibility within 30 days of receiving any information from the person or from the expiration date that the person could submit the information under this subsection. A person aggrieved by the division's eligibility finding would have the right to request review under 4VAC25-130-775.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 29, Issue 13, eff. March 27, 2013.

4VAC25-130-774.13. Permit revisions.

(a) General. During the term of a permit, the permittee may submit an application to the division for a revision of the permit.

(b) Application requirements and procedures.

(1) The Director shall establish a time period within which the division will approve or disapprove an application for a permit revision; and

(2) The division shall establish guidelines establishing the scale or extent of revisions for which all the permit application information requirements and procedures of this Subchapter, including notice, public participation, and notice of decision requirements of 4VAC25-130-773.13, 4VAC25-130-773.19(b) (1) and (3), and 4VAC25-130-778.21 shall apply. Such requirements and procedures shall apply at a minimum to all significant permit revisions.

(c) Criteria for approval. No application for a permit revision shall be approved unless the application demonstrates and the division finds that reclamation as required by the Act and the regulatory program can be accomplished, applicable requirements under 4VAC25-130-773.15(c) which are pertinent to the revision are met, and the application for a revision complies with all requirements of the Act and the regulatory program.

(d) Request to change permit boundary. Any extensions to the area covered by the permit, except incidental boundary revisions, shall be made by application for a new permit.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 774.13, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-774.15. Permit renewals.

(a) General. A valid permit shall carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit.

(b) Application requirements and procedures.

(1) An application for renewal of a permit shall be filed with the division at least 120 days before expiration of the existing permit term.

(2) An application for renewal of a permit shall be in the form required by the division and shall include at a minimum--

(i) The name and address of the permittee, the term of the renewal requested, and the permit number or other identifier;

(ii) Evidence that a liability insurance policy or adequate self insurance under 4VAC25-130-800.60 will be provided by the applicant for the proposed period of renewal;

(iii) Evidence that the performance bond in effect for the operation will continue in full force and effect for any renewal requested, as well as any additional bond required by the division pursuant to Subchapter VJ;

(iv) A copy of the proposed newspaper notice and proof of publication of same, as required by 4VAC25-130-778.21; and

(v) Additional revised or updated information required by the division.

(3) Applications for renewal shall be subject to the requirements of public notification and public participation contained in 4VAC25-130-773.13 and 4VAC25-130-773.19(b).

(4) If an application for renewal includes any proposed revisions to the permit, such revisions shall be identified and subject to the requirements of 4VAC25-130-774.13.

(5) If an applicant for renewal of a permit includes a proposal to extend the mining and reclamation operation beyond the boundaries authorized in the existing permit, the portion of the application which addresses any new land areas shall be subject to the full standards applicable to new permit applications under the Act, Parts 773, 774, 775, 777, 778, 779, 780, 783, 784, and applicable portions of 785, Subchapter VJ and this chapter.

(c) Approval process.

(1) Criteria for approval. The division shall approve a complete and accurate application for permit renewal, unless it finds, in writing that--

- (i) The terms and conditions of the existing permit are not being satisfactorily met;
- (ii) The present surface coal mining and reclamation operations are not in compliance with the environmental protection standards of the Act and this chapter;
- (iii) The requested renewal substantially jeopardizes the permittee's continuing ability to comply with the Act and the regulatory program on existing permit areas;
- (iv) The permittee has not provided evidence of having liability insurance or self-insurance as required in 4VAC25-130-800.60;
- (v) The permittee has not provided evidence that any performance bond required to be in effect for the operation will continue in full force and effect for the proposed period of renewal, as well as any additional bond the division might require pursuant to Subchapter VJ; or
- (vi) Additional revised or updated information required by the division has not been provided by the applicant.

(2) Burden of proof. In the determination of whether to approve or deny a renewal of a permit, the burden of proof shall be on the opponents of renewal.

(d) Renewal term. Any permit renewal shall be for a term not to exceed the period of the original permit established under 4VAC25-130-773.19.

(e) Notice of decision. The division shall send copies of its decision to the applicant, to each person who filed comments or objections on the renewal, to each party to any informal conference held on the permit renewal, and to the OSM.

(f) Administrative and judicial review. Any person having an interest which is or may be adversely affected by the decision of the division shall have the right to administrative and judicial review set forth in Part 775.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 774.15, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-774.17. Transfer, assignment, or sale of permit rights.

(a) General. No transfer, assignment, or sale of rights granted by a permit shall be made without the prior written approval of the division. At its discretion, the division may allow a prospective

successor in interest to engage in surface coal mining and reclamation operations under the permit during the pendency of an application for approval of a transfer, assignment, or sale of permit rights submitted under subdivision (b) of this section, provided that the prospective successor in interest can demonstrate to the satisfaction of the division that sufficient bond coverage will remain in place.

(b) Application requirements. An applicant for approval of the transfer, assignment, or sale of permit rights shall--

(1) Provide the division with an application for approval of the proposed transfer, assignment, or sale including--

(i) The name and address of the existing permittee and permit number;

(ii) A brief description of the proposed transaction requiring approval; and

(iii) The legal, financial, compliance, and related information required by Part 778 for the applicant for approval of the transfer, assignment, or sale of permit rights.

(2) Advertise the filing of the application in a newspaper of general circulation in the locality of the operations involved, indicating the name and address of the applicant, the permittee, the permit number or other identifier, the geographic location of the permit, and the address to which written comments may be sent;

(3) Obtain appropriate performance bond coverage in an amount sufficient to cover the proposed operations, as required under Subchapter VJ.

(c) Public participation. Any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the division within 30 days.

(d) Criteria for approval. The division may allow a permittee to transfer, assign, or sell permit rights to a successor, if it finds in writing that the successor--

(1) Is eligible to receive a permit in accordance with 4VAC25-130-773.15(b) and (c);

(2) Has submitted a performance bond or other guarantee, or obtained the bond coverage of the original permittee, as required by Subchapter VJ; and

(3) Meets any other requirements specified by the division.

(e) Notification.

(1) The division shall notify the permittee, the successor, commenters, and the OSM of its findings.

(2) Proof of the consumation shall be submitted to the division upon its approval of the transfer, assignment, or sale of permit rights, and prior to the issuance of the new permit.

(f) Continued operation under existing permit. The successor in interest shall assume the liability and reclamation responsibilities of the existing permit and shall conduct the surface coal mining and reclamation operations in full compliance with the Act, the regulatory program, and the

terms and conditions of the existing permit, unless the applicant has obtained a new or revised permit as provided in this Subchapter.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 774.17, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Volume 29, Issue 13, eff. March 27, 2013.

Part 775

Administrative and Judicial Review of Decisions

4VAC25-130-775.11. Administrative review.

(a) General. Within 30 days after an applicant or permittee is notified of the decision of the division concerning an application for approval of exploration required under Part 772, a permit for surface coal mining and reclamation operations, a permit revision, a permit renewal, or a transfer, assignment, or sale of permit rights, the applicant, permittee, or any person with an interest which is or may be adversely affected by the decision may request, in writing, a formal public hearing to contest such action with the Director of the Division of Mined Land Reclamation, Drawer 900, Big Stone Gap, VA 24219.

(b) Administrative hearings.

(1) The division shall conduct the formal hearing within 30 days from the receipt of the request. The hearing shall be conducted in accordance with § 2.2-4020 of the Virginia Administrative Process Act. No person who presided at an informal conference under 4VAC25-130-773.13 (c) shall either preside at the hearing or participate in the formal hearing decision and any subsequent appeal.

(2) The division may, under such conditions as it prescribes, grant such temporary relief as it deems appropriate, pending final determination of the proceeding, if—

(i) All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

(ii) The person requesting that relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding;

(iii) The relief sought will not adversely affect the public health or safety, or cause significant, imminent environmental harm to land, air, or water resources; and

(iv) The relief sought is not the issuance of a permit where a permit has been denied, in whole or in part, by the division except that continuation under an existing permit may be allowed where the operation has a valid permit issued under § 45.1-238 of the Act.

(3) The hearing shall be conducted under the following conditions:

(i) The hearing officer may administer oaths and affirmations, subpoena witnesses and written or printed materials, compel attendance of witnesses or production of those materials, compel allowable discovery, and take evidence, including, but not limited to, site inspections of the land to be affected and other surface coal mining and reclamation operations carried on by the applicant in the general vicinity of the proposed operations.

(ii) A verbatim record of each public hearing required by this section shall be made, and a transcript made available on the motion of any party or by order of the hearing officer.

(iii) Ex parte contacts between representatives of the parties appearing before the hearing officer and the hearing officer shall be prohibited, unless prior approval is given by the noncontacting party.

(4) Within 30 days after the close of the record, the director shall issue and furnish the applicant and each person who participated in the hearing, a copy of the hearing officer's decision and written findings of fact, and conclusions of law. The decision shall also set forth the right of appeal process.

(5) The burden of proof at such hearings shall be on the party seeking to reverse the decision of the division.

(c) Within 14 days after the issuance of the hearing officer's decision under subdivision (b) (4) of this section, the applicant, permittee or any other person with an interest which is or may be adversely affected and who appeared and participated in the hearing, may appeal to the director or his designee for review of the record and reconsideration of the hearing officer's decision. The director or his designee may also, on his own motion, with notice to the parties, within the same time period, review the record and reconsider the hearing officer's decision. No further evidence will be allowed in connection with such review and reconsideration but the director or his designee may hear further argument, and may also, after considering the record, remand any case for further hearing if he considers such action necessary to develop the facts. Within 30 days of the appeal or motion for review and reconsideration, the director or his designee shall complete his review of the hearing officer's decision and issue a final decision thereon.

(d) All requests for hearing or appeals for review and reconsideration made under this section shall be filed with the Director, Division of Mined Land Reclamation, Department of Mines, Minerals and Energy, Post Office Drawer 900, Big Stone Gap, Virginia 24219.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 775.11, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 23, Issue 13, eff. April 4, 2007.

4VAC25-130-775.13. Judicial review.

(a) General. Any applicant, or any person with an interest which is or may be adversely affected by the final administrative decision and who has participated in the administrative hearings as an objector may appeal as provided in subsection (b) of this section if—

(1) The applicant or person is aggrieved by the director or his designee's final order under 4VAC25-130-775.11; or

(2) Either the division or the director failed to act within time limits specified in 4VAC25-130-775.11.

(b) Judicial review. The final order of the division pursuant to subsection (a) of 4VAC25-130-775.11 shall be subject to judicial review as provided by the Virginia Administrative Process Act and the rules of the Supreme Court of Virginia as promulgated thereto. The availability of such review shall not be construed to limit the operation of the rights established in Section 520 of the Federal Act.

(c) All notices of appeal for judicial review of a hearing officer's final decision, or the final decision on review and reconsideration, shall be filed with the Director, Division of Mined Land Reclamation, Department of Mines, Minerals and Energy, Post Office Drawer 900, Big Stone Gap, Virginia 24219.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR 480-03-19 § 775.13, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 23, Issue 13, eff. April 4, 2007.

Part 777

General Content Requirements for Permit Applications

4VAC25-130-777.1. Scope.

This Part provides minimum requirements concerning the general content for permit applications.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 777.1, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-777.11. Format and contents.

(a) An application shall--

- (1) Contain current information, as required by this Subchapter;
- (2) Be clear and concise; and
- (3) Be filed in the format required by the division.

(b) Five copies of the application shall be filed with the division.

(c) If used in the application, referenced materials shall either be provided to the division by the applicant or be readily available to the division. If provided, relevant portions of referenced published materials shall be presented briefly and concisely in the application by photocopying or abstracting and with explicit citations.

(d) Applications for permits; revisions; renewals; or transfers, sales or assignments of permit rights shall be verified under oath, by a responsible official of the applicant, that the information contained in the application is true and correct to the best of the official's information and belief.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 777.11, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-777.12. Preapplication conference.

Prior to submitting an application for a coal surface mining permit, all maps and plans shall be reviewed in the field at the proposed mining site with the division inspector assigned to the area to be mined. Two copies of a pre-inspection report shall be completed by the inspector. One copy shall be transmitted to the applicant, and one copy kept in the division office.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 777.12, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-777.13. Reporting of technical data.

(a) All technical data submitted in the application shall be accompanied by the names of persons or organizations that collected and analyzed the data, dates of the collection and analysis of the data, and descriptions of the methodology used to collect and analyze the data.

(b) Technical analyses shall be planned by or under the direction of a professional qualified in the subject to be analyzed.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 777.13, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-777.14. Maps and plans; general requirements.

(a) Maps submitted with applications shall be presented in a consolidated format, to the extent possible, and shall include all the types of information that are set forth on topographic maps of the U.S. Geological Survey of the 1:24,000 scale series. Application maps of the permit area and adjacent area shall be at a scale of 1:4,800 (1"=400'). Maps shall clearly show the lands and waters within those areas.

(b) All maps and plans submitted with the application shall distinguish among each of the phases during which surface coal mining operations were or will be conducted at any place within the life of operations.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 777.14, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-777.15. Completeness.

An application for a permit to conduct surface coal mining and reclamation operations shall be complete and shall include at a minimum--

(a) For surface mining activities, the information required under Parts 778, 779, and 780, and, as applicable to the operation, Part 785; and

(b) For underground mining activities, the information required under Parts 778, 783, and 784, and, as applicable to the operation, Part 785.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 777.15, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16,

1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-777.17. Permit fees.

An application for a surface coal mining and reclamation permit issued under this chapter shall be accompanied by a permit fee of \$26.00 per acre or any fraction thereof for the total acreage permitted. An anniversary fee of \$13.00 per acre or any fraction thereof for areas disturbed under the permit shall be payable annually on each anniversary date of the permit. The fees shall be in the form of cash, cashier's check, certified check or personal check.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 777.17, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; amended, Virginia Register Volume 23, Issue 22, eff. August 8, 2007.

Part 778

Permit Applications–Minimum Requirements for Legal, Financial, Compliance, and Related Information

4VAC25-130-778.1. Scope and purpose.

This Part establishes the minimum legal, financial, compliance, and informational requirements for permit applications for surface coal mining and reclamation operations.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 778.1, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-778.13. Identification of interests.

An application shall contain the following information:

(a) A statement as to whether the applicant or the operator, if different from the applicant, is a corporation, partnership, single proprietorship, association, or other business entity.

(b) The name, address, telephone number and, as applicable, employer identification number of the:

(1) Applicant;

(2) Applicant's resident agent; and

(3) Operator, if different from the applicant; and

(4) Each business entity in the applicant's and operator's organizational structure, up to and including the ultimate parent entity of the applicant and operator. For every such business entity, provide the required information for every president, chief executive officer, partner, member, and/or director or persons in similar positions, and every person who owns of record 10% or more of the entity.

(c) For the applicant and operator, if different from the applicant, information required by subsection (d) of this section for every:

(1) Officer;

(2) Partner;

(3) Member;

(4) Director;

(5) Person performing a function similar to a director; and

(6) Person who owns, of record, 10% or more of the entity.

(d) For each person listed from subdivision (c) of this section:

(1) The person's name, address, and telephone number;

(2) The person's position title and relationship to the applicant or operator, including percentage of ownership and location in the organizational structure; and

(3) The date the person began functioning in that position.

(e) A list of all the names under which the applicant, operator, partners, or principal shareholders, and the operator's partners or principal shareholders operate or previously operated a surface coal mining operation in the United States within a five-year period preceding the date of submission of the application, including the name, address, identifying numbers, including employer identification number, Federal or State permit number and MSHA number, the date of issuance of the MSHA number, and the regulatory authority.

(f) For the applicant and operator, if different from the applicant, a list of any pending permit applications for surface coal mining operators filed in the United States, identifying each application by its application number, jurisdiction, or by other identifying information when necessary.

(g) For any surface coal mining operation the applicant or operator owned or controlled within a five-year period preceding the submission of the permit application, and for any surface coal mining operation the applicant or operator controlled on that date, the:

(1) Permittee's and operator's name, address, and tax identification numbers;

(2) Name of the regulatory authority with jurisdiction over the permit with the corresponding

federal or state permit number and MSHA number; and

(3) The permittee's and operator's relationship to the operation, including the percentage of ownership and location in the organizational structure.

(h) The name and address of each legal or equitable owner of record of the surface and mineral property to be mined, each holder of record of any leasehold interest in the property to be mined, and any purchaser of record under a real estate contract for the property to be mined.

(i) The name and address of each owner of record of all property (surface and subsurface) contiguous to any part of the proposed permit area.

(j) The Mine Safety and Health Administration (MSHA) numbers for all mine-associated structures that require MSHA approval.

(k) A statement of all lands, interest in lands, options, or pending bids on interests held or made by the applicant for lands contiguous to the area described in the permit application. If requested by the applicant, any information required by this subdivision that is not on public file pursuant to state law shall be held in confidence by the division, as provided under 4VAC25-130-773.13(d)(3)(ii).

(l) Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed surface mining activities. This list shall identify each license and permit by:

(1) Type of permit or license;

(2) Name and address of issuing authority;

(3) Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and

(4) If a decision has been made, the date of approval or disapproval by each issuing authority.

(m) After an applicant is notified that his application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under subdivisions (a) through (d) of this section.

(n) The applicant shall submit the information required by this section and by 4VAC25-130-778.14 in any prescribed OSM format that is issued.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 778.13, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16,

1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Volume 29, Issue 13, eff. March 27, 2013.

4VAC25-130-778.14. Violation information.

Each application shall contain the following information:

(a) A statement of whether the applicant or any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

- (1) Had a federal or state coal mining permit suspended or revoked in the five years preceding the date of submission of the application; or
- (2) Forfeited a performance bond or similar security deposited in lieu of bond at any time.

(b) A brief explanation of the facts involved if any such suspension, revocation, or forfeiture referred to in subdivisions (a)(1) and (2) of this section has occurred, including:

- (1) Identification number and date of issuance of the permit, and the date and amount of bond or similar security;
- (2) Identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for the action;
- (3) The current status of the permit, bond, or similar security involved;
- (4) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and
- (5) The current status of the proceedings.

(c) For any violation of a provision of the federal Act or this chapter, or of any law, rule or regulation of the United States, or of any state law, rule or regulation enacted pursuant to federal law, rule or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violation notices received by the applicant during the three year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by the operator. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:

- (1) Any identifying numbers for the operation, including the federal or state permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department or agency.
- (2) A brief description of the violation alleged in the notice;
- (3) The date, location, and type of any administrative or judicial proceedings initiated

concerning the violation, including, but not limited to, proceedings initiated by any person identified in subdivision (c) of this section to obtain administrative or judicial review of the violation;

(4) The current status of the proceedings and of the violation notice; and

(5) The actions, if any, taken by any person identified in subdivision (c) of this section to abate the violation.

(d) After an applicant is notified that his application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under this section.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 778.14, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Volume 29, Issue 13, eff. March 27, 2013.

4VAC25-130-778.15. Right-of-entry information.

(a) An application shall contain a description of the documents upon which the applicant bases his legal right to enter and begin surface coal mining and reclamation operations in the permit area and shall state whether that right is the subject of pending litigation. The description shall identify the documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(b) Where the private mineral estate to be mined has been severed from the private surface estate, an applicant shall also submit--

(1) A copy of the written consent of the surface owner for the extraction of coal by surface mining methods; or

(2) A copy of the conveyance that expressly grants or reserves the right to extract coal by surface mining methods; or

(3) If the conveyance does not expressly grant the right to extract the coal by surface mining methods, documentation that under applicable State law, the applicant has the legal authority to extract the coal by those methods.

(c) Nothing in this section shall be construed to provide the division with the authority to adjudicate property rights disputes.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 778.15, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-778.16. Status of unsuitability claims.

(a) An application shall contain available information as to whether the proposed permit area is within an area designated as unsuitable for surface coal mining and reclamation operations or is within an area under study for designation in an administrative proceeding under Parts 762 and 764.

(b) An application in which the applicant claims the exemption described in 4VAC25-130-762.13(c) shall contain information supporting the assertion that the applicant made substantial legal and financial commitments before January 4, 1977, concerning the proposed surface coal mining and reclamation operations.

(c) An application in which the applicant proposes to conduct surface coal mining activities within 300 feet of an occupied dwelling or within 100 feet of a public road shall contain the necessary information and meet the requirements of 4VAC25-130-761.12.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 778.16, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-778.17. Permit term.

(a) Each application shall state the anticipated or actual starting and termination date of each phase of the surface coal mining and reclamation operation and the anticipated number of acres of land to be affected during each phase of mining over the life of the mine.

(b) If the applicant requires an initial permit term in excess of 5 years in order to obtain necessary financing for equipment and the opening of the operation, the application shall--

(1) Be complete and accurate covering the specified longer term; and

(2) Show that the proposed longer term is reasonably needed to allow the applicant to obtain financing for equipment and for the opening of the operation with the need confirmed, in writing, by the applicant's proposed source of financing.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 778.17, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-778.18. Insurance.

Either a certificate of liability insurance or evidence of self-insurance in compliance with 4VAC25-130-800.60 shall be provided prior to application approval and before the permit is issued.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 778.18, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-778.21. Proof of publication.

A copy of the newspaper advertisement of the application for a permit, significant revision of a permit, or renewal of a permit, and proof of publication of the advertisements which is acceptable to the division shall be filed with the division and made a part of the application no later than 4 weeks after the last date of publication as required by 4VAC25-130-773.13(a)(1).

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 778.21, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-778.22. Facilities or structures used in common.

The plans of a facility or structure that is to be shared by two or more separately permitted mining operations shall be included in one permit application and referenced in the other applications. In accordance with Part 800, the applicant applying for the permit shall bond the facility or structure. The permittees sharing it may agree to an agreement for assuming their respective responsibilities. The application may include a copy of any such agreement between or among the parties setting forth the respective responsibilities of each party for the facility or structure. The agreement shall demonstrate to the satisfaction of the division that all responsibilities under this chapter for the facility or structure will be met.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 778.22, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

Part 779

Surface Mining Permit Applications–Minimum Requirements for Information on Environmental Resources

4VAC25-130-779.4. Responsibilities.

(a) It is the responsibility of the applicant to provide, except where specifically exempted in this Part, all information required by this Part in the application.

(b) It is the responsibility of State and Federal government agencies to provide information for applications as specifically required by this Part.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 779.4, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-779.11. General requirements.

Each permit application shall include a description of the existing, premining environmental resources within the proposed permit area and adjacent areas that may be affected or impacted by the proposed surface mining activities.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 779.11, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-779.12. General environmental resources information.

Each application shall describe and identify--

(a) The lands subject to surface coal mining operations over the estimated life of those

operations and the size, sequence, and timing of the subareas for which it is anticipated that individual permits for mining will be sought; and

(b) The nature of cultural, historic and archaeological resources listed or eligible for listing on the National Register of Historic Places and known archaeological sites within the proposed permit and adjacent areas.

(1) The description shall be based on all available information, including, but not limited to, information from the State Historic Preservation Officer and from local archaeological, historical, and cultural preservation agencies.

(2) The division may require the applicant to identify and evaluate important historic and archaeological resources that may be eligible for listing on the National Register of Historic Places, through --

(i) Collection of additional information,

(ii) Conduct of field investigations, or

(iii) Other appropriate analyses.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 779.12, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-779.18. Climatological information.

(a) When requested by the division, the application shall contain a statement of the climatological factors that are representative of the proposed locality of the permit area, including:

(1) The average seasonal precipitation;

(2) The average direction and velocity of prevailing winds; and

(3) Seasonal temperature ranges.

(b) The division may request such additional data as deemed necessary to ensure compliance with the requirements of this Subchapter.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 779.18, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16,

1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-779.19. Vegetation information.

(a) The permit application shall contain a map or narrative describing the vegetation within the proposed permit area and within any proposed reference area.

(b) Where a vegetation map is utilized, show the outline of the proposed permit area, and show north point indicator. Sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife for those species of fish and wildlife identified under 4VAC25-130-780.16.

(c) Explain the results of the vegetative survey conducted on the area to be affected by the proposed mining operation. This survey must include as a minimum:

(1) Names, addresses, and qualifications of persons or organizations which collected and analyzed the data.

(2) Dates of the collection and analyses.

(3) Names, addresses, and positions of people in private, academic publications, or governmental agencies who contributed to the preparation of the vegetative survey.

(d) Delineate the major plant communities of canopy, shrubs, and understory types.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 779.19, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-779.21. Soil resources information.

Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of the analyses, trials, and tests required under 4VAC25-130-780.18.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 779.21, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-779.22. [Repealed]

Historical Notes

Derived from VR480-03-19 § 779.22, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; repealed, Virginia Register Volume 15, Issue 6, eff. January 6, 1999.

4VAC25-130-779.24. Maps; general requirements.

The permit application shall include maps showing-

- (a) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;
- (b) The boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin surface mining activities;
- (c) The boundaries of all areas proposed to be affected over the estimated total life of the proposed surface mining activities, with a description of size, sequence, and timing of the mining of subareas for which it is anticipated that additional permits will be sought;
- (d) The location of all buildings in and within 1,000 feet of the proposed permit area with identification of the current use of the buildings;
- (e) The location of surface and subsurface man-made features within, passing through, or passing over the proposed permit area, including, but not limited to, major electric transmission lines, pipelines, and agricultural drainage tile fields;
- (f) The location and boundaries of any proposed reference areas for determining the success of revegetation;
- (g) The locations of water supply intakes for current users of surface water flowing into, out of, and within a hydrologic area defined by the division and those surface waters which will receive discharges from affected areas in the proposed permit area;
- (h) Each public road located in or within 100 feet of the proposed permit area;
- (i) The boundaries of any public park and locations of any cultural or historical resources listed or eligible for listing in the National Register of Historic Places and known archaeological sites within the permit and adjacent area;
- (j) Each cemetery that is located in or within 100 feet of the proposed permit area;
- (k) Any land within the proposed permit area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act; and
- (l) Other relevant information required by the division.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 779.24, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-779.25. Cross sections, maps and plans.

(a) The application shall include cross sections, maps, and plans showing—

- (1) Elevations and locations of test borings and core samplings;
- (2) Elevations and locations of monitoring stations used to gather data for water quality and quantity and fish and wildlife in preparation of the application;
- (3) Nature, depth, and thickness of the coal seam to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined;
- (4) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;
- (5) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit and adjacent area;
- (6) Location and extent of subsurface water, if encountered, within the proposed permit and adjacent area;
- (7) Location of surface water bodies, such as streams, lakes, ponds, springs, constructed or natural drains, and irrigation ditches within the proposed permit and adjacent areas;
- (8) Location and extent of existing or previously surface-mined areas within the proposed permit area;
- (9) Location and dimensions of existing areas of spoil, waste, and noncoal waste disposal, dams, embankments, other impoundments, and water treatment facilities within the proposed permit area; and
- (10) Location and depth, if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent area.

(b) Maps, plans, and cross sections included in a permit application which are required by this section shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer or certified professional geologist with assistance from experts in related fields, such as land surveying and landscape architecture and shall be updated as required by the division.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 779.25, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 15, Issue 6, eff. January 6, 1999.

Part 780

Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan

4VAC25-130-780.4. Responsibilities.

(a) It is the responsibility of the applicant to provide to the division all of the information required by this Part, except where specifically exempted in this Part.

(b) It is the responsibility of the State and Federal governmental agencies to provide information to the division where specifically required in this Part.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 780.4, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-780.11. Operation plan; general requirements.

Each application shall contain a description of the mining operations proposed to be conducted during the life of the mine within the proposed permit area, including, at a minimum, the following:

- (a) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and
- (b) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of such facilities is necessary for postmining land use as specified in 4VAC25-130-816.133):
 - (1) Dams, embankments, and other impoundments;
 - (2) Overburden and topsoil handling and storage areas and structures;
 - (3) Coal removal, handling, storage, cleaning, and transportation areas and structures;
 - (4) Spoil, coal processing waste, and non-coal waste removal, handling, storage, transportation, and disposal areas and structures;

- (5) Mine facilities; and
- (6) Water pollution control facilities.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 780.11, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-780.12. Operation plan; existing structures.

(a) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include:

- (1) Location;
- (2) Plans of the structure which describe its current condition;
- (3) Approximate dates on which construction of the existing structure was begun and completed; and
- (4) A showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards of Subchapter VK or, if the structure does not meet the performance standards of Subchapter VK, a showing whether the structure meets the performance standards of the initial regulatory program.

(b) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include--

- (1) Design specifications for the modification or reconstruction of the structure to meet the design and performance standards of Subchapter VK;
- (2) A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;
- (3) Provisions for monitoring the structure during and after modification or reconstruction to ensure that the performance standards of Subchapter VK are met; and
- (4) A showing that the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 780.12, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-780.13. Operation plan; blasting.

(a) **Blasting plan.** Each application shall contain a blasting plan for the proposed permit area, explaining how the applicant will comply with the requirements of 4VAC25-130-816.61 through 4VAC25-130-816.68. This plan shall include, at a minimum, information setting forth the limitations the permittee will meet with regard to ground vibration and airblast, the bases for those limitations, and the methods to be applied in controlling the adverse effects of blasting operations.

(b) **Monitoring system.** Each application shall contain a description of any system to be used to monitor compliance with the standards of 4VAC25-130-816.67 including the type, capability, and sensitivity of any blast-monitoring equipment and proposed procedures and locations of monitoring.

(c) **Blasting near underground mines.** Blasting operations within 500 feet of active underground mines require approval of the State and Federal regulatory authorities concerned with the health and safety of underground miners.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 780.13, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-780.14. Operation plan; maps and plans.

Each application shall contain maps and plans as follows:

(a) The maps and plans shall show the land proposed to be affected throughout the operation and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under 4VAC25-130-779.24 through 4VAC25-130-779.25.

(b) The following shall be shown for the proposed permit area:

(1) Buildings, utility corridors and facilities to be used;

(2) The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;

(3) Each area of land for which a performance bond or other equivalent guarantee will be posted under Subchapter VJ;

- (4) Each coal storage, cleaning and loading area;
- (5) Each topsoil, spoil, coal waste, and non-coal waste storage area;
- (6) Each water diversion, collection, conveyance, treatment, storage, and discharge facility to be used;
- (7) Each source of waste and each waste disposal facility relating to coal processing or pollution control;
- (8) Each facility to be used to protect and enhance fish and wildlife and related environmental values;
- (9) Each explosive storage and handling facility; and
- (10) Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with 4VAC25-130-780.25 and fill area for the disposal of excess spoil in accordance with 4VAC25-130-780.35.

(c) Maps, plans, and cross sections required under Paragraphs (b)(4), (5), (6), (9) and (10), shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer, or certified professional geologist, with assistance from experts in related fields, such as land surveying and landscape architecture, except that--

- (1) Maps, plans, and cross sections for sedimentation ponds may only be prepared by a qualified registered professional engineer; and
- (2) Maps, plans, and cross sections of spoil disposal facilities may only be prepared by a qualified registered professional engineer.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 780.14, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-780.16. Fish and wildlife information.

(a) Resource information. Each application shall include fish and wildlife resource information for the permit area and adjacent area.

- (1) The scope and level of detail for such information shall be determined by the division in consultation with State and Federal agencies with responsibilities for fish and wildlife and shall be sufficient to design the protection and enhancement plan required under Paragraph (b) of this section.

(2) Site-specific resource information necessary to address the respective species or habitats shall be required when the permit area or adjacent area is likely to include:

(i) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary under the Endangered Species Act of 1973, as amended (16 USC § 1531 et seq.), or those species or habitats protected by similar State statutes;

(ii) Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas; or

(iii) Other species or habitats identified through agency consultation as requiring special protection under State or Federal law.

(b) Protection and enhancement plan. Each application shall include a description of how, to the extent possible using the best technology currently available, the operator will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, during the surface coal mining and reclamation operations and how enhancement of these resources will be achieved where practicable. This description shall-

(1) Be consistent with the requirements of 4VAC25-130-816.97;

(2) Apply, at a minimum, to species and habitats identified under Paragraph (a) of this section; and

(3) Include-

(i) Protective measures that will be used during the active mining phase of operation. Such measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines, and the monitoring of surface water quality and quantity; and

(ii) Enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Such measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the placement of perches and nest boxes. Where the plan does not include enhancement measures, a statement shall be given explaining why enhancement is not practicable.

(c) Fish and Wildlife Service review. Upon request, the division shall provide the resource information required under Paragraph (a) of this section and the protection and enhancement plan required under Paragraph (b) of this section to the U.S. Department of the Interior, Fish and Wildlife Service Regional or Field Office for their review. This information shall be provided within 10 days of receipt of the request from the Service.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 780.16, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-780.18. Reclamation plan; general requirements.

(a) Each application shall contain a plan for reclamation of the lands within the proposed permit area, showing how the applicant will comply with Section 45.1-242 of the Act, Subchapter VK, and the environmental protection performance standards of the regulatory program. The plan shall include, at a minimum, all information required under 4VAC25-130-780.18 through 4VAC25-130-780.37.

(b) Each plan shall contain the following information for the proposed permit area:

- (1) A detailed timetable for the completion of each major step in the reclamation plan;
- (2) A detailed estimate of the cost of reclamation of the proposed operations required to be covered by a performance bond under Subchapter VJ with supporting calculations for the estimates;
- (3) A plan for backfilling, soil stabilization, compacting, and grading, with contour maps or cross-sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 4VAC25-130-816.102 through 4VAC25-130-816.107;
- (4) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 4VAC25-130-816.22. A demonstration of the suitability of topsoil substitutes or supplements under 4VAC25-130-816.22(b) shall be based upon analysis of the thickness of soil horizons, total depth, texture, percent coarse fragments, pH, phosphorous, potassium, and areal extent of the different kinds of soils. The division may require other chemical and physical analyses, and field-site trials, or greenhouse tests if determined to be necessary or desirable to demonstrate the suitability of the topsoil substitutes or supplements;
- (5) A plan for revegetation as required in 4VAC25-130-816.111 through 4VAC25-130-816.116, including, but not limited to, descriptions of the--
 - (i) Schedule of revegetation;
 - (ii) Species and amounts per acre of seeds and seedlings to be used;
 - (iii) Methods to be used in planting and seeding;
 - (iv) Mulching techniques;
 - (v) Irrigation, if appropriate, and pest and disease control measures, if any;
 - (vi) Measures proposed to be used to determine the success of revegetation as required in 4VAC25-130-816.116; and

- (vii) A soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;
- (6) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 4VAC25-130-816.59;
- (7) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 4VAC25-130-816.89 and 4VAC25-130-816.102 and a description of the contingency plans which have been developed to preclude sustained combustion of such materials;
- (8) A description, including appropriate cross sections and maps, of the measures to be used to seal or manage mine openings, and to plug, case, or manage exploration holes, other bore holes, wells, and other openings within the proposed permit area, in accordance with 4VAC25-130-816.13 through 4VAC25-130-816.15;
- (9) A description of the measures to be used to stabilize all exposed surface areas to control erosion and air pollution attendant to erosion as required under 4VAC25-130-816.95; and
- (10) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 USC § 7401 et seq.), the Clean Water Act (33 USC § 1251 et seq.), and other applicable air and water quality laws and regulations and health and safety standards.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 780.18, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1984; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-780.21. Hydrologic information.

(a) Sampling and analysis methodology. All water-quality analyses performed to meet the requirements of this section shall be conducted according to the methodology in the current edition of "Standard Methods for the Examination of Water and Wastewater," which is incorporated by reference, or the methodology in 40 CFR 136 and 434. Water quality sampling performed to meet the requirements of this section shall be conducted according to either methodology listed above when feasible.

(b) Baseline information. The application shall include the following baseline hydrologic information, and any additional information required by the division.

- (1) Ground-water information. The location and ownership for the permit and adjacent areas of existing wells, springs, and other ground-water resources, seasonal quality and quantity of ground-water, and usage. Water quality descriptions shall include, at a minimum, total dissolved solids or specific conductance corrected to 25° C, pH, total iron, and total

manganese. Ground-water quantity descriptions shall include, at a minimum, approximate rates of discharge or usage and elevation of the water in the coal seam, and each water-bearing stratum above and potentially impacted stratum below the coal seam.

(2) Surface-water information. The name, location, ownership, and description of all surface-water bodies such as streams, lakes, and impoundments, the location of any discharge into any surface-water body in the proposed permit and adjacent areas, and information on surface-water quality and quantity sufficient to demonstrate seasonal variation and water usage. Water quality descriptions shall include, at a minimum, baseline information on total suspended solids, total dissolved solids or specific conductance corrected to 25° C, pH, total iron, and total manganese. Baseline acidity and alkalinity information shall be provided if there is a potential for acid drainage from the proposed mining operation. Water quantity descriptions shall include, at a minimum, baseline information on seasonal flow rates.

(3) Supplemental information. If the determination of the probable hydrologic consequences (PHC) required by Paragraph (f) of this section indicates that adverse impacts on or off the proposed permit area may occur to the hydrologic balance, or that acid-forming or toxic-forming material is present that may result in the contamination of ground-water or surface-water supplies, then information supplemental to that required under Paragraphs (b)(1) and (b)(2) of this section shall be provided to evaluate such probable hydrologic consequences and to plan remedial and reclamation activities. Such supplemental information may be based upon drilling, aquifer tests, hydrogeologic analysis of the water-bearing strata, flood flows, or analysis of other water quality or quantity characteristics.

(c) Baseline cumulative impact area information.

(1) Hydrologic and geologic information for the cumulative impact area necessary to assess the probable cumulative hydrologic impacts of the proposed operation and all anticipated mining on surface- and ground-water systems as required by Paragraph (g) of this section shall be provided to the division if available from appropriate Federal or State agencies.

(2) If the information is not available from such agencies, then the applicant may gather and submit this information to the division as part of the permit application.

(3) The permit shall not be approved until the necessary hydrologic and geologic information is available to the division.

(d) Modeling. The use of modeling techniques, interpolation or statistical techniques may be included as part of the permit application, but actual surface- and ground-water information may be required by the division for each site even when such techniques are used.

(e) Alternative water source information. If the PHC determination required by Paragraph (f) of this section indicates that the proposed mining operation may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial or other legitimate purpose, then the application shall contain information on water availability and alternative water sources, including the suitability of alternative water sources for existing premining uses and approved postmining land uses.

(f) Probable hydrologic consequences determination.

(1) The application shall contain a determination of the probable hydrologic consequences (PHC) of the proposed operation upon the quality and quantity of surface and ground water under seasonal flow conditions for the proposed permit and adjacent areas.

(2) The PHC determination shall be based on baseline hydrologic, geologic and other information collected for the permit application and may include data statistically representative of the site.

(3) The PHC determination shall include findings on:

(i) Whether adverse impacts may occur to the hydrologic balance;

(ii) Whether acid-forming or toxic-forming materials are present that could result in the contamination of surface or ground-water supplies;

(iii) Whether the proposed operation may proximately result in contamination, diminution or interruption of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial, or other legitimate purpose; and

(iv) What impact the proposed operation will have on:

(A) Sediment yield from the disturbed area;

(B) acidity, total suspended and dissolved solids, and other important water quality parameters of local impact;

(C) flooding or streamflow alteration;

(D) ground-water and surface-water availability and;

(E) other characteristics as required by the division.

(4) An application for a permit revision shall be reviewed by the division to determine whether a new or updated PHC determination shall be required.

(g) Cumulative hydrologic impact assessment.

(1) The division shall provide an assessment of the probable cumulative hydrologic impacts (CHIA) of the proposed operation and all anticipated mining upon surface-and ground-water systems in the cumulative impact area. The CHIA shall be sufficient to determine, for purposes of permit approval, whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area. The division may allow the applicant to submit data and analyses relevant to the CHIA with the permit application.

(2) An application for a permit revision shall be reviewed by the division to determine whether a new or updated CHIA shall be required.

(h) Hydrologic reclamation plan. The application shall include a plan, with maps and descriptions, indicating how the relevant requirements of Part 816, including 4VAC25-130-

816.41 through 4VAC25-130-816.43, will be met. The plan shall be specific to the local hydrologic conditions. It shall contain the steps to be taken during mining and reclamation through bond release to minimize disturbances to the hydrologic balance within the permit and adjacent areas; to prevent material damage outside the permit area; to meet applicable Federal and State water quality laws and regulations; and to protect the rights of present water users. The plan shall include the measures to be taken to: Avoid acid or toxic drainage; prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow; provide and maintain water-treatment facilities when needed; control drainage; restore approximate premining recharge capacity and protect or replace rights of present water users. The plan shall specifically address any potential adverse hydrologic consequences identified in the PHC determination prepared under Paragraph (f) of this section and shall include preventive and remedial measures.

(i) Ground-water monitoring plan.

(1) The application shall include a ground-water monitoring plan based upon the PHC determination required under Paragraph (f) of this section and the analysis of all baseline hydrologic, geologic and other information in the permit application. The plan shall provide for the monitoring of parameters that relate to the suitability of the ground water for current and approved postmining land uses, to support the objectives for protection of the hydrologic balance set forth in Paragraph (h) of this section, to determine the cause of diminution or contamination of usable ground waters, and to guard against offsite influences and provide representation of the effects of the proposed surface mining operation. It shall identify the quantity and quality parameters to be monitored, sampling frequency, and site locations. It shall describe how the data may be used to determine the impacts of the operation upon the hydrologic balance. At a minimum, total dissolved solids or specific conductance corrected to 25° C, pH, total iron, total manganese, and water levels shall be monitored and data submitted quarterly or as otherwise specified by the division for each monitoring location.

(2) If an applicant can demonstrate by the use of the PHC determination and other available information that a particular water-bearing stratum in the proposed permit and adjacent areas is not one which serves as an aquifer which significantly ensures the hydrologic balance within the cumulative impact area, then monitoring of that stratum may be waived by the division.

(3) The monitoring plan shall be designed in accordance with the following Subparagraphs. The division may require additional monitoring and the analysis or measurement of other parameters on a site-specific basis. During the mining or postmining phase of activity, the division may require additional monitoring if it is determined that the established monitoring plan is ineffective.

(i) When pH or chemical analysis results indicate no immediate or potential acid-producing or toxic material within the proposed disturbed area, the applicant may submit a plan for representative monitoring. Appropriate monitoring which will indicate changes in subsurface water quality and quantity at sites which provide geological and hydrological representation of the entire proposed permit area shall be established.

- (ii) When potential for adverse impacts to ground waters in use exists, then a representative monitoring plan utilizing wells or springs shall be provided. Information for each ground water monitoring well or spring shall be submitted.
- (iii) When no potential to affect ground waters in use exists, then a plan utilizing piezometers or methods for representative monitoring in the unsaturated zone may be used.
- (iv) When structural or stratigraphic variations are present within the proposed permit area, altering the ground water regime and indicating more than one representative area, the applicant shall include within the plan a minimum of one monitoring site for each representative area.
- (v) The applicant shall include a plan to source monitor near isolated acid-producing or toxic material using piezometers or equipment for monitoring the unsaturated zone.
- (vi) When any portion of a surface mine operation is proposed within a stream floodplain, the applicant shall include a plan for monitoring using wells in alluvial material both upstream and downstream of the proposed area to be disturbed. The plan shall also include adjacent upgradient and adjacent downgradient monitoring wells for any slurry pond with water having a pH of less than 6.0, coal stockpiles, and acid-producing or toxic-producing material disposal sites.
- (vii) In cases where the alluvium monitored has been determined to be consistently or seasonally unsaturated, the division may require revision of the monitoring plan to include appropriate monitoring of the unsaturated zone.
- (viii) Where potential exists for adverse impacts to the hydrologic regime from a surface mining operation situated in an area of colluvium, the division may require monitoring similar to that required in floodplain areas.
- (ix) For each refuse or hollow fill without an underdrain, the applicant shall include a plan to monitor the fill using piezometers which are sufficient in number and design to permit a planar determination of a potential water table within the fill.
- (x) When a refuse or hollow fill is designed to contain underdrains, then a plan for monitoring the underdrain may be used, provided that the underdrain discharge indicates changes in water quality resulting from the fill and not from other sources or outside influences. If the underdrain is not representative of the effects of the fill material, then piezometers shall be used.
- (xi) The applicant may include a plan to use a spring in lieu of other monitoring methods if:
- (A) The spring is located both stratigraphically and geographically so that data representing an area to be disturbed or an acid or toxic spoil isolation area will be obtained.

(B) The spring has been observed and documented satisfactorily to the division to be a permanent spring.

(j) Surface-water monitoring plan.

(1) The application shall include a surface-water monitoring plan based upon the PHC determination required under Paragraph (f) of this section and the analysis of all baseline hydrologic, geologic, and other information in the permit application. The plan shall provide for the monitoring of parameters that relate to the suitability of the surface water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance as set forth in Paragraph (h) of this section as well as the effluent limitations found at 40 CFR 434.

(2) The plan shall identify the surface-water quantity and quality parameters to be monitored, sampling frequency and site locations. It shall describe how the data may be used to determine the impacts of the operation upon the hydrologic balance.

(i) At all monitoring locations in surface-water bodies such as streams, lakes, and impoundments, that are potentially impacted or into which water will be discharged, and at upstream monitoring locations, the total dissolved solids or specific conductance corrected to 25° C, total suspended solids, pH, total iron, total manganese, and flow shall be monitored.

(ii) For point-source discharges, monitoring shall be conducted in accordance with 40 CFR 122, 123 and 434 and as required by the National Pollutant Discharge Elimination System permit.

(3) The monitoring reports shall be submitted to the division quarterly. The division may require additional monitoring.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 780.21, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-780.22. Geologic information.

(a) General. Each application shall include geologic information in sufficient detail to assist in determining--

(1) The probable hydrologic consequences of the operation upon the quality and quantity of surface and ground-water in the permit and adjacent areas, including the extent to which surface-and ground-water monitoring is necessary;

(2) All potentially acid- or toxic-forming strata down to and including the stratum

immediately below the lowest coal seam to be mined; and

(3) Whether reclamation as required by this chapter can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

(b) Geologic information shall include, at a minimum the following:

(1) A description of the geology of the proposed permit and adjacent areas down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest coal seam to be mined which may be adversely impacted by mining. The description shall include the areal and structural geology of the permit and adjacent areas, and other parameters which influence the required reclamation and the occurrence, availability, movement, quantity, and quality of potentially impacted surface and ground waters. It shall be based on--

(i) The cross sections, maps and plans required by 4VAC25-130-779.25;

(ii) The information obtained under Paragraphs (b)(2) and (c) of this section; and

(iii) Geologic literature and practices.

(2) Analyses of samples collected from test borings; drill cores; or fresh, unweathered, uncontaminated samples from rock outcrops from the permit area, down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest seam to be mined which may be adversely impacted by mining. The analyses shall result in the following:

(i) Logs showing the lithologic characteristics including physical properties and thickness of each stratum and location of ground water where occurring;

(ii) Chemical analyses identifying those strata that may contain acid- or toxic-forming or alkalinity-producing materials and to determine their content except that the division may find that the analysis for alkalinity-producing materials is unnecessary; and

(iii) Chemical analyses of the coal seam for acid- or toxic-forming materials, including the total sulfur and pyritic sulfur, except that the division may find that the analysis of pyritic sulfur content is unnecessary.

(c) If determined to be necessary to protect the hydrologic balance or to meet the performance standards of this chapter, the division may require the collection, analysis, and description of geologic information in addition to that required by Paragraph (b) of this section.

(d) An applicant may request the division to waive in whole or in part the requirements of Paragraph (b)(2) of this section. The waiver may be granted only if the division finds in writing that the collection and analysis of such data is unnecessary because other equivalent information is available to the division in a satisfactory form.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 780.22, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-780.23. Reclamation plan; land use information.

(a) The plan shall contain a statement of the condition, capability, and productivity of the land within the proposed permit area; including:

(1) A map and supporting narrative of the uses of the land existing at the time of the filing of the application. If the premining use of the land was changed within five years before the anticipated data of beginning the proposed operations, the historic use of the land shall also be described to the extent such information is available. In the case of previously mined land, the use of the land prior to any mining shall also be described to the extent such information is available.

(2) A narrative of land capability and productivity which analyzes the land use description under paragraph (a) of this section in conjunction with other environmental resources information. The narrative shall provide analyses of:

(i) The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover, and the hydrology of the proposed permit area; and

(ii) The productivity of the proposed permit area before mining, expressed as average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, state agricultural universities, or appropriate state natural resource or agricultural agencies.

(b) Each plan shall contain a detailed description of the proposed use, following reclamation, of the land within the proposed permit area, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use of existing land use policies and plans. This description shall explain:

(1) How the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

(2) Where a land use different from the premining land use is proposed, all materials needed for approval of the alternative use under 4VAC25-130-816.33; and

(3) The consideration which has been given to making all of the proposed surface mining activities consistent with surface owner plans and applicable state and local land use plans and programs.

(c) The description shall be accompanied by a copy of the comments concerning the proposed use by the legal or equitable owner of record of the surface of the proposed permit area and the state

and local government agencies which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 780.23, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 15, Issue 6, eff. January 6, 1999.

4VAC25-130-780.25. Reclamation plan; siltation structures, impoundments, banks, dams, and embankments.

(a) General. Each application shall include a general plan and a detailed design plan for each proposed siltation structure, water impoundment, and coal processing waste bank, dam, or embankment within the proposed permit area.

(1) Each general plan shall—

- (i) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer, or by a certified professional geologist with assistance from experts in related fields, such as land surveying and landscape architecture;
- (ii) Contain a description, map, and cross section of the structure and its location;
- (iii) Contain preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure;
- (iv) Contain a survey describing the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred; and
- (v) Contain a certification statement which includes a schedule setting forth the dates that any detailed design plans for structures that are not submitted with the general plan will be submitted to the division. The division shall have approved, in writing, the detailed design plan for the structure before construction of the structure begins.

(2) Impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210-VI-TR60), Oct. 1985). "Earth Dams and Reservoirs." Technical Release No. 60 (TR-60) shall comply with the requirements of this section for structures that meet or exceed the size of other criteria of the Mine Safety and Health Administration. The technical release is hereby incorporated by reference. Copies may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, Order No. PB 87-157509/AS. Copies can be inspected at the OSM Headquarters Office, Office of Surface Mining Reclamation and

Enforcement, Administrative Record, Room 660, 800 North Capitol Street, Washington, D.C. or at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, D.C. Each detailed design plan for a structure that meets or exceeds the size or other criteria of the Mine Safety and Health Administration, 30 CFR 77.216(a), shall—

- (i) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer with assistance from experts in related fields, such as geology, land surveying, and landscape architecture;
- (ii) Include any geotechnical investigation, design, and construction requirements for the structure;
- (iii) Describe the operation and maintenance requirements for each structure; and
- (iv) Describe the timetable and plans to remove each structure, if appropriate.

(3) Each detailed design plan for structures not included in paragraph (a)(2) of this section shall—

- (i) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer or registered land surveyor except that all coal processing waste dams and embankments covered by 4VAC25-130-816.81 through 4VAC25-130-816.84 shall be certified by a qualified registered professional engineer;
- (ii) Include any design and construction requirements for the structure, including any required geotechnical information;
- (iii) Describe the operation and maintenance requirements for each structure; and
- (iv) Describe the timetable and plans to remove each structure, if appropriate.

(b) Siltation structures. Siltation structures shall be designed in compliance with the requirements of 4VAC25-130-816.46.

(c) Permanent and temporary impoundments.

(1) Permanent and temporary impoundments shall be designed to comply with the requirements of 4VAC25-130-816.49.

(2) Each plan for an impoundment meeting the size or other criteria of the Mine Safety and Health Administration shall comply with the requirements of 30 CFR 77.216-1 and 77.216-2. The plan required to be submitted to the District Manager of MSHA under 30 CFR 77.216 shall be submitted to the division as part of the permit application in accordance with paragraph (a) of this section.

(3) For impoundments not included in paragraph (a)(2) of this section, the division may establish engineering design standards that ensure stability comparable to a 1.3 minimum static safety factor in lieu of engineering tests to establish compliance with the minimum static factor of 1.3 specified in 4VAC25-130-816.49(a)(4)(ii) of this chapter.

(d) Coal processing waste banks. Coal processing waste banks shall be designed to comply with

the requirements of 4VAC25-130-816.81 through 4VAC25-130-816.84.

(e) Coal processing waste dams and embankments. Coal processing waste dams and embankments shall be designed to comply with the requirements of 4VAC25-130-816.81 through 4VAC25-130-816.84. Each plan shall comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

- (1) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.
- (2) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.
- (3) All springs, seepage, and ground water flow observed or anticipated during wet periods, in the area of the proposed dam or embankment shall be identified on each plan.
- (4) Consideration shall be given to the possibility of mud flows, rock debris falls, or other landslides into the dam, embankment, or impounded material.

(f) If the structure meets the Class B or C criteria for dams in TR-60 or meets the size or other criteria of 30 CFR 77.216(a), each plan under paragraphs (b), (c), and (e) of this section shall include a stability analysis of each structure. The stability analysis shall include, but not be limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 780.25, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 15, Issue 6, eff. January 6, 1999.

4VAC25-130-780.27. Reclamation plan; surface mining near underground mining.

For surface mining activities within the proposed permit area to be conducted within 500 feet of an underground mine, the application shall describe the measures to be used to comply with 4VAC25-130-816.79.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 780.27, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-780.29. Diversions.

Each application shall contain descriptions, including maps and cross sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 4VAC25-130-816.43.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 780.29, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-780.31. Protection of public parks and historic places.

(a) For any publicly owned parks or any places listed on the National Register of Historic Places that may be adversely affected by the proposed operation, each plan shall describe the measures to be used --

(1) To prevent adverse impacts, or

(2) If valid existing rights exist or joint agency approval is to be obtained under 4VAC25-130-761.12(f), to minimize adverse impacts.

(b) The division may require the applicant to protect historic and archaeological properties listed on or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. Appropriate mitigation and treatment measures may be required to be taken after permit issuance provided that the required measures are completed before the properties are affected by any mining operation.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 780.31, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16,

1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-780.33. Relocation or use of public roads.

Each application shall describe, with appropriate maps and cross sections, the measures to be used to ensure that the interests of the public and land owners affected are protected, if, under 4VAC25-130-761.12(d), the applicant seeks to have the division approve--

- (a) Conducting the proposed surface mining activities within 100 feet of the right-of-way line of any public road, except where the mine access or haul roads join that right-of-way; or
- (b) Relocating a public road.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 780.33, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-780.35. Disposal of excess spoil.

(a) Each application shall contain descriptions, including appropriate maps and cross section drawings of the proposed disposal site and design of the spoil disposal structures according to 4VAC25-130-816.71 through 4VAC25-130-816.75. These plans shall describe the geotechnical investigation, design, construction, operation, maintenance and removal, if appropriate, of the site and structures.

(b) Except for the disposal of excess spoil on preexisting benches, each application shall contain the results of a geotechnical investigation of the proposed disposal site, including the following:

- (1) The character of bedrock and any adverse geologic conditions in the disposal area;
- (2) A survey identifying all springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the disposal site;
- (3) A survey of the potential effects of subsidence of the subsurface strata due to past and future mining operations;
- (4) A technical description of the rock materials to be utilized in the construction of those disposal structures containing rock chimney cores or underlain by a rock drainage blanket; and
- (5) A stability analysis including, but not limited to, strength parameters, pore pressures and long-term seepage conditions. These data shall be accompanied by a description of all engineering design assumptions and calculations and the alternatives considered in selecting the specific design specifications and methods.

(c) If, under 4VAC25-130-816.71(d), rocktoe buttresses or key-way cuts are required, the

application shall include the following:

- (1) The number, location, and depth of borings or test pits which shall be determined with respect to the size of the spoil disposal structure and subsurface conditions; and
- (2) Engineering specifications utilized to design the rocktoe buttress or key-way cuts which shall be determined in accordance with paragraph (b)(5) of this section.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 780.35, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 15, Issue 6, eff. January 6, 1999.

4VAC25-130-780.37. Road systems.

(a) Plans and drawings. Each applicant for a surface coal mining and reclamation permit shall submit plans and drawings for each road, as defined in 4VAC25-130-700.5, to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall-

- (1) Include a map, appropriate cross sections, design drawings and specifications for road widths, gradients, surfacing materials, cuts, fill embankments, culverts, bridges, drainage ditches, low-water crossings, and drainage structures;
- (2) Contain the drawings and specifications of each proposed road that is located in the channel of an intermittent or perennial stream, as necessary for approval of the road by the division in accordance with 4VAC25-130-816.150(d)(1);
- (3) Contain the drawings and specifications for each proposed ford of perennial or intermittent streams that is used as a temporary route, as necessary for approval of the ford by the division in accordance with 4VAC25-130-816.151(c)(2);
- (4) Contain a description of measures to be taken to obtain approval of the division for alteration or relocation of a natural stream channel under 4VAC25-130-816.151(d)(5);
- (5) Contain the drawings and specifications for each low-water crossing of perennial or intermittent stream channels so that the division can maximize the protection of the stream in accordance with 4VAC25-130-816.151(d)(6); and
- (6) Describe the plans to remove and reclaim each road that would not be retained under an approved postmining land use, and the schedule for this removal and reclamation.

(b) Primary road certification. The plans and drawings for each primary road shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer, or a qualified registered professional land surveyor, experienced in the design and construction of roads, as meeting the requirements of this chapter; current, prudent engineering practices; and

any design criteria established by the division.

(c) Geotechnical analysis. A report of appropriate geotechnical analysis shall be submitted, where approval of the division is required for alternative specifications, or for steep cut slopes under 4VAC25-130-816.150 and 4VAC25-130-816.151.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 780.37, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-780.38. Support facilities.

Each applicant for a surface coal mining and reclamation permit shall submit a description, plans, and drawings for each support facility to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall include a map, appropriate cross sections, design drawings, and specifications sufficient to demonstrate compliance with 4VAC25-130-816.181 for each facility.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 780.38, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

Part 783

Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources

4VAC25-130-783.4. Responsibilities.

(a) It is the responsibility of the applicant to provide, except where specifically exempted in this Part, all information required by this Part in the application.

(b) It is the responsibility of State and Federal governmental agencies to provide information for applications as specifically required by this Part.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 783.4, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-783.11. General requirements.

Each permit application shall include a description of the existing, premining environmental resources within the proposed permit area and adjacent areas that may be affected or impacted by the proposed underground mining activities.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 783.11, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-783.12. General environmental resources information.

Each application shall describe and identify--

- (a) The lands subject to surface coal mining operations over the estimated life of those operations and the size, sequence, and timing of the subareas for which it is anticipated that individual permits for mining will be sought; and
- (b) The nature of cultural and historic resources listed or eligible for listing on the National Register of Historic Places and known archaeological features within the proposed permit and adjacent areas. The description shall be based on all available information, including, but not limited to, data of State and local archaeological, historical, and cultural preservation agencies.
 - (1) The description shall be based on all available information, including, but not limited to, information from the State Historic Preservation Officer and from local archaeological, historical, and cultural preservation agencies.
 - (2) The division may require the applicant to identify and evaluate important historic and archaeological resources that may be eligible for listing on the National Register of Historic Places, through --
 - (i) Collection of additional information;
 - (ii) Conduct of field investigations; or
 - (iii) Other appropriate analyses.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 783.12, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982;

December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-783.18. Climatological information.

(a) When requested by the division, the application shall contain a statement of the climatological factors that are representative of the proposed locality of the permit area, including:

- (1) The average seasonal precipitation;
- (2) The average direction and velocity of prevailing winds; and
- (3) Seasonal temperature ranges.

(b) The division may request such additional data as deemed necessary to ensure compliance with the requirements of this Subchapter.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 783.18, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-783.19. Vegetation information.

(a) The permit application shall contain a map or narrative describing the vegetation within the proposed permit area and within any proposed reference area.

(b) Where a vegetative map is utilized, show the outline of the proposed permit area, and show north point indicator. Sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife for those species of fish and wildlife identified under 4VAC25-130-784.21.

(c) Explain the results of the vegetative survey conducted on the area to be affected by the proposed mining operation. This survey must include as a minimum:

- (1) Names, addresses, and qualifications of persons or organization which collected and analyzed the data.
- (2) Dates of the collection and analyses.
- (3) Names, addresses, and positions of people in private, academic publications, or governmental agencies who contributed to the preparation of the vegetative survey.

(d) Delineate the major plant communities of canopy, shrubs, and understory types.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 783.19, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-783.21. Soil resources information.

Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of the analyses, trials, and tests required under 4VAC25-130-784.13.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 783.21, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-783.22. Land-use information.

(a) The application shall contain a statement of the condition, capability, and productivity of the land which will be affected by surface operations and facilities within the proposed permit area, including--

(1) A map and supporting narrative of the uses of the land existing at the time of the filing of the application. If the premining use of the land was changed within five years before the anticipated date of beginning the proposed operations, the historic use of the land shall also be described.

(2) A narrative of land capability and productivity, which analyzes the land-use description under Paragraph (a) of this section in conjunction with other environmental resources information required under this Part. The narrative shall provide analysis of:

- (i) The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover and the hydrology of the area proposed to be affected by surface operations or facilities; and
- (ii) The productivity of the area proposed to be affected by surface operations and facilities before mining, expressed as average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, or appropriate State natural resources or agricultural agencies specified by the division.

(b) The application shall state whether the proposed permit area has been previously mined, and, if so, the following information, if available:

- (1) The type of mining method used;
- (2) The coal seams or other mineral strata mined;
- (3) The extent of coal or other minerals removed;
- (4) The approximate dates of past mining; and
- (5) The uses of the land preceding mining.

(c) The application shall contain a description of the existing land uses and land use classifications under local law, if any, of the proposed permit and adjacent area.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 783.22, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-783.24. Maps; general requirements.

The permit application shall include maps showing--

- (a) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;
- (b) The boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin underground mining activities;
- (c) The boundaries of all areas proposed to be affected over the estimated total life of the proposed underground mining activities, with a description of size, sequence, and timing of the mining of subareas for which it is anticipated that additional permits will be sought;
- (d) The location of all buildings in and within 1,000 feet of the proposed permit area, with identification of the current use of the buildings;
- (e) The location of surface and subsurface man-made features within, passing through, or passing over the proposed permit area, including, but not limited to, major electric transmission lines, pipelines, and agricultural drainage tile fields;
- (f) The location and boundaries of any proposed reference areas for determining the success of revegetation;
- (g) The locations of water supply intakes for current users of surface waters flowing into, out of, and within a hydrologic area defined by the division and those surface waters which will receive discharges from affected areas in the proposed permit area;

- (h) Each public road located in or within 100 feet of the proposed permit area;
- (i) The boundaries of any public park and locations of any cultural or historical resources listed or eligible for listing in the National Register of Historic Places and known archaeological sites within the permit and adjacent areas;
- (j) Each cemetery that is located in or within 100 feet of the proposed permit area;
- (k) Any land within the proposed permit area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act; and
- (l) Other relevant information required by the division.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 783.24, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-783.25. Cross sections, maps and plans.

- (a) The application shall include cross sections, maps, and plans showing—
 - (1) Elevations and locations of test borings and core samplings;
 - (2) Elevations and locations of monitoring stations used to gather data for water quality and quantity and fish and wildlife in preparation of the application;
 - (3) Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined;
 - (4) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;
 - (5) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit and adjacent area;
 - (6) Location and extent of subsurface water, if encountered, within the proposed permit and adjacent area, including, but not limited to horizontal and vertical distribution of aquifers, and portrayal of seasonal differences of head in different aquifers on cross sections and contour maps;
 - (7) Location of surface water bodies, such as streams, lakes, ponds, springs, constructed or natural drains, and irrigation ditches within the proposed permit and adjacent areas;
 - (8) Location and extent of existing or previously surface-mined areas within the proposed

permit area;

(9) Location and dimensions of existing areas of spoil, waste, coal development waste and noncoal waste disposal, dams, embankments, other impoundments, and water treatment facilities within the proposed permit area;

(10) Location and depth, if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent areas;

(b) Maps, plans, and cross sections included in a permit application which are required by this section shall be prepared by or under the direction of and certified by a qualified registered professional engineer or certified professional geologist, with assistance from experts in related fields, such as land surveying and landscape architecture and shall be updated as required by the division.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 783.25, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 15, Issue 6, eff. January 6, 1999.

Part 784

Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan

4VAC25-130-784.4. Responsibilities.

(a) It is the responsibility of the applicant to provide to the division all of the information required by this Part, except where specifically exempted in this Part.

(b) It is the responsibility of the State and Federal governmental agencies to provide information to the division where specifically required in this Part.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 784.4, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-784.11. Operation plan; general requirements.

Each application shall contain a description of the mining operations proposed to be conducted during the life of the mine within the proposed permit area, including, at a minimum, the following:

- (a) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and
- (b) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of such facilities is necessary for postmining land use as specified in 4VAC25-130-817.133):
- (1) Dams, embankments, and other impoundments;
 - (2) Overburden and topsoil handling and storage areas and structures;
 - (3) Coal removal, handling, storage, cleaning, and transportation areas and structures;
 - (4) Spoil, coal processing waste, mine development waste, and non-coal waste removal, handling, storage, transportation, and disposal areas and structures;
 - (5) Mine facilities; and
 - (6) Water pollution control facilities.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 784.11, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-784.12. Operation plan; existing structures.

- (a) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include:
- (1) Location;
 - (2) Plans of the structure which describe its current condition;
 - (3) Approximate dates on which construction of the existing structure was begun and completed.
- (b) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include-
- (1) Design specifications for modification and reconstruction of the structure to meet design and performance standards of Subchapter VK;
 - (2) A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;

- (3) Provisions for monitoring the structure during and after modification or reconstruction to ensure that the performance standards of Subchapter VK are met;
- (4) A showing that the risk of harm to the environment or to the public health or safety is not significant during the period of modification or reconstruction; and
- (5) A showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards of Subchapter VK, or, if the structure does not meet the performance standards of Subchapter VK, a showing whether the structure meets the performance standards of the initial regulatory program.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 784.12, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-784.13. Reclamation plan; general requirements.

- (a) Each application shall contain a plan for reclamation of the lands within the proposed permit area, showing how the applicant will comply with Sections 45.1-242 and 45.1-243 of the Act, Subchapter VK, and the environmental protection performance standards of the regulatory program. The plan shall include, at a minimum, all information required under 4VAC25-130-784.13 through 4VAC25-130-784.29.
- (b) Each plan shall contain the following information for the proposed permit area:
 - (1) A detailed timetable for the completion of each major step in the reclamation plan;
 - (2) A detailed estimate of the cost of the reclamation of the proposed operations required to be covered by a performance bond under Subchapter VJ, with supporting calculations for the estimates;
 - (3) A plan for backfilling, soil stabilization, compacting, and grading, with contour maps or cross sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 4VAC25-130-817.102 through 4VAC25-130-817.107;
 - (4) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 4VAC25-130-817.22. A demonstration of the suitability of topsoil substitutes or supplements under 4VAC25-130-817.22(b) shall be based upon analysis of the thickness of soil horizons, total depth, texture, percent coarse fragments, pH, phosphorus, potassium, and areal extent of the different kinds of soils. The division may require other chemical and physical analyses, field-site trials, or greenhouse tests if determined to be necessary or desirable to demonstrate the suitability of the topsoil substitutes or supplements;

(5) A plan for revegetation as required in 4VAC25-130-817.111 through 4VAC25-130-817.116 including, but not limited to, descriptions of the--

- (i) Schedule of revegetation;
- (ii) Species and amounts per acre of seeds and seedlings to be used;
- (iii) Methods to be used in planting and seeding;
- (iv) Mulching techniques;
- (v) Irrigation, if appropriate, and pest and disease control measures, if any;
- (vi) Measures proposed to be used to determine the success of revegetation as required in 4VAC25-130-817.116; and
- (vii) A soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;

(6) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 4VAC25-130-817.59;

(7) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 4VAC25-130-817.89 and 4VAC25-130-817.102 and a description of the contingency plans which have been developed to preclude sustained combustion of such materials;

(8) A description, including appropriate cross sections and maps, of the measures to be used to seal or manage mine openings, and to plug, case, or manage exploration holes, other bore holes, wells, and other openings within the proposed permit area, in accordance with 4VAC25-130-817.13 through 4VAC25-130-817.15;

(9) A description of the measures to be used to stabilize all exposed surface areas to control erosion and air pollution attendant to erosion as required under 4VAC25-130-817.95; and

(10) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 USC § 7401 et seq.), the Clean Water Act (33 USC § 1251 et seq.), and other applicable air and water quality laws and regulations and health and safety standards.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 784.13, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-784.14. Hydrologic information.

(a) Sampling and analysis. All water quality analyses performed to meet the requirements of this section shall be conducted according to the methodology in the current edition of "Standard Methods for the Examination of Water and Wastewater," which is incorporated by reference, or the methodology in 40 CFR Parts 136 and 434. Water quality sampling performed to meet the requirements of this section shall be conducted according to either methodology listed above when feasible.

(b) Baseline information. The application shall include the following baseline hydrologic information, and any additional information required by the division.

(1) Groundwater information. The location and ownership for the permit and adjacent areas of existing wells, springs, and other groundwater resources, seasonal quality and quantity of groundwater, and usage. Water quality descriptions shall include, at a minimum, total dissolved solids or specific conductance corrected to 25°C, pH, total iron, and total manganese. Groundwater quantity descriptions shall include, at a minimum, approximate rates of discharge or usage and elevation of water in the coal seam, and each water-bearing stratum above and potentially impacted stratum below the coal seam.

(2) Surface water information. The name, location, ownership and description of all surface water bodies such as streams, lakes, and impoundments, the location of any discharge into any surface water body in the proposed permit and adjacent areas, and information on surface water quality and quantity sufficient to demonstrate seasonal variation and water usage. Water quality descriptions shall include, at a minimum, baseline information on total suspended solids, total dissolved solids or specific conductance corrected to 25°C, pH, total iron, and total manganese. Baseline acidity and alkalinity information shall be provided if there is a potential for acid drainage from the proposed mining operation. Water quantity descriptions shall include, at a minimum, baseline information on seasonal flow rates.

(3) Supplemental information. If the determination of the probable hydrologic consequences (PHC) required by subsection (e) of this section indicates that adverse impacts on or off the proposed permit area may occur to the hydrologic balance, or that acid-forming or toxic-forming material is present that may result in the contamination of groundwater or surface water supplies, then information supplemental to that required under subdivisions (b)(1) and (b)(2) of this section shall be provided to evaluate such probable hydrologic consequences and to plan remedial and reclamation activities. Such supplemental information may be based upon drilling, aquifer tests, hydrogeologic analysis of the water-bearing strata, flood flows, or analysis of other water quality or quantity characteristics.

(c) Baseline cumulative impact area information.

(1) Hydrologic and geologic information for the cumulative impact area necessary to assess the probable cumulative hydrologic impacts of the proposed operation and all anticipated mining on surface water and groundwater systems as required by subsection (f) of this section shall be provided to the division if available from appropriate federal or state agencies.

(2) If this information is not available from such agencies, then the applicant may gather and submit this information to the division as part of the permit application.

(3) The permit shall not be approved until the necessary hydrologic and geologic information is available to the division.

(d) Modeling. The use of modeling techniques, interpolation or statistical techniques may be included as part of the permit application, but actual surface water and groundwater information may be required by the division for each site even when such techniques are used.

(e) Probable hydrologic consequences determination.

(1) The application shall contain a determination of the probable hydrologic consequences (PHC) of the proposed operation upon the quality and quantity of surface and ground water under seasonal flow conditions for the proposed permit and adjacent areas.

(2) The PHC determination shall be based on baseline hydrologic, geologic and other information collected for the permit application and may include data statistically representative of the site.

(3) The PHC determination shall include findings on:

(i) Whether adverse impacts may occur to the hydrologic balance;

(ii) Whether acid-forming or toxic-forming materials are present that could result in the contamination of surface water or groundwater supplies; and

(iii) What impact the proposed operation will have on:

(A) Sediment yield from the disturbed area;

(B) Acidity, total suspended and dissolved solids, and other important water quality parameters of local impact;

(C) Flooding or streamflow alteration;

(D) Groundwater and surface water availability; and

(E) Other characteristics as required by the division.

(iv) Whether the underground mining activities conducted after October 24, 1992, may result in contamination, diminution or interruption of a well or spring in existence at the time the permit application is submitted and used for domestic, drinking, or residential purposes within the permit or adjacent areas.

(4) An application for a permit revision shall be reviewed by the division to determine whether a new or updated PHC determination shall be required.

(f) Cumulative hydrologic impact assessment.

(1) The division shall provide an assessment of the probable cumulative hydrologic impacts (CHIA) of the proposed operation and all anticipated mining upon surface water and groundwater systems in the cumulative impact area. The CHIA shall be sufficient to determine, for purposes of permit approval, whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area. The

division may allow the applicant to submit data and analyses relevant to the CHIA with the permit application.

(2) An application for a permit revision shall be reviewed by the division to determine whether a new or updated CHIA shall be required.

(g) Hydrologic reclamation plan. The application shall include a plan, with maps and descriptions, indicating how the relevant requirements of Part 817 of this chapter, including 4VAC25-130-817.41 through 4VAC25-130-817.43, will be met. The plan shall be specific to the local hydrologic conditions. It shall contain the steps to be taken during mining and reclamation through bond release to minimize disturbance to the hydrologic balance within the permit and adjacent areas; to prevent material damage outside the permit area; and to meet applicable federal and state water quality laws and regulations. The plan shall include the measures to be taken to: avoid acid or toxic drainage; prevent to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow; provide and maintain water treatment facilities when needed; control drainage; prevent the sudden release of accumulated water from the underground workings; and restore approximate premining recharge capacity. The plan shall specifically address any potential adverse hydrologic consequences identified in the PHC determination prepared under subsection (e) of this section and shall include preventive and remedial measures.

(h) Groundwater monitoring plan.

(1) The application shall include a groundwater monitoring plan based upon the PHC determination required under subsection (e) of this section and the analysis of all baseline hydrologic, geologic and other information in the permit application. The plan shall provide for the monitoring of parameters that relate to the suitability of the groundwater for current and approved postmining land uses, to support the objectives for protection of the hydrologic balance set forth in subsection (g) of this section, to determine the cause of diminution or contamination of usable ground waters, and to guard against off-site influences and provide representation of the effects of the proposed surface coal mining operation. It shall identify the quantity and quality parameters to be monitored, sampling frequency and site locations. It shall describe how the data may be used to determine the impacts of the operation upon the hydrologic balance. At a minimum, total dissolved solids or specific conductance corrected to 25°C, pH, total iron, total manganese, and water levels shall be monitored and data submitted quarterly or as otherwise specified by the division for each monitoring location.

(2) If an applicant can demonstrate by use of the PHC determination and other available information that a particular water-bearing stratum in the proposed permit and adjacent areas is not one which serves as an aquifer which significantly ensures the hydrologic balance within the cumulative impact area, then monitoring of that stratum may be waived by the division.

(3) The monitoring plan shall be designed in accordance with the following subparagraphs. The division may require additional monitoring and the analysis or measurement of other parameters on a site-specific basis. During the mining or postmining phase of activity, the division may require additional monitoring if it is determined that the established monitoring

plan is ineffective.

- (i) When pH or chemical analysis results indicate no immediate or potential acid-producing or toxic material within the proposed disturbed area, the applicant may submit a plan for representative monitoring. Appropriate monitoring which will indicate changes in subsurface water quality and quantity at sites which provide geological and hydrological representation of the entire proposed permit area shall be established.
- (ii) When potential for adverse impacts to ground waters in use exists, then a representative monitoring plan utilizing wells or springs shall be provided.
- (iii) When no potential to affect ground waters in use exists, then a plan utilizing piezometers or methods for representative monitoring in the unsaturated zone may be used.
- (iv) When structural or stratigraphic variations are present within the proposed permit area, altering the ground water regime and indicating more than one representative area, the applicant shall include within the plan a minimum of one monitoring site for each representative area.
- (v) The applicant shall include a plan to source monitor near isolated acid-producing or toxic material using piezometers or equipment for monitoring the unsaturated zone.
- (vi) When any portion of a surface mine operation is proposed within a stream floodplain, the applicant shall include a plan for monitoring using wells in alluvial material both upstream and downstream of the proposed area to be disturbed. The plan shall also include adjacent upgradient and adjacent downgradient monitoring wells for any slurry pond with water having a pH of less than 6.0, coal stockpiles, and acid-producing or toxic-producing material disposal site.
- (vii) In cases where the alluvium monitored has been determined to be consistently or seasonally unsaturated, the division may require revision of the monitoring plan to include appropriate monitoring of the unsaturated zone.
- (viii) Where potential exists for adverse impacts to the hydrologic regime from a surface mining operation situated in an area of colluvium, the division may require monitoring similar to that required in floodplain areas.
- (ix) For each refuse or hollow fill without an underdrain, the applicant shall include a plan to monitor the fill using piezometers which are sufficient in number and design to permit a planar determination of a potential water table within the fill.
- (x) When a refuse or hollow fill is designed to contain underdrains, then a plan for monitoring the underdrain may be used, provided that the underdrain discharge indicates changes in water quality resulting from the fill and not from other sources or outside influences. If the underdrain is not representative of the effects of the fill material, then piezometers shall be used.

(xi) The applicant may include a plan to use a spring in lieu of other monitoring methods if:

(A) The spring is located both stratigraphically and geographically so that data representing an area to be disturbed or an acid or toxic spoil isolation area will be obtained.

(B) The spring has been observed and documented satisfactorily to the division to be a permanent spring.

(xii) For the adjacent area, the applicant shall submit a plan to individually monitor each significant aquifer identified with wells, springs, mine discharges or any combination of these. The plan shall include flow measurements for each point under seasonal conditions. The division shall require quality analyses in addition to quantity measurements if it determines that such monitoring is necessary for protection of the hydrologic balance.

(i) Surface water monitoring plan.

(1) The application shall include a surface water monitoring plan based upon the PHC determination required under subsection (e) of this section and the analysis of all baseline hydrologic, geologic and other information in the permit application. The plan shall provide for the monitoring of parameters that relate to the suitability of the surface water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance as set forth in subsection (g) of this section as well as the effluent limitations found at 40 CFR Part 434.

(2) The plan shall identify the surface water quantity and quality parameters to be monitored, sampling frequency and site locations. It shall describe how the data may be used to determine the impacts of the operation upon the hydrologic balance.

(i) At all monitoring locations in surface water bodies such as streams, lakes, and impoundments, that are potentially impacted or into which water will be discharged and at upstream monitoring locations, the total dissolved solids or specific conductance corrected to 25°C, total suspended solids, pH, total iron, total manganese, and flow shall be monitored.

(ii) For point-source discharges, monitoring shall be conducted in accordance with 40 CFR Parts 122, 123, and 434 and as required by the National Pollutant Discharge Elimination System permit.

(3) The monitoring reports shall be submitted to the division quarterly. The division may require additional monitoring.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 784.14, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982;

December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 13, Issue 11, eff. March 19, 1997; Volume 14, Issue 5, eff. December 24, 1997.

4VAC25-130-784.15. Reclamation plan; land use information.

(a) The plan shall contain a statement of the condition, capability, and productivity of the land within the proposed permit area; including:

(1) A map and supporting narrative of the uses of the land existing at the time of the filing of the application. If the premining use of the land was changed with five years before the anticipated date of beginning the proposed operations, the historic use of the land shall also be described to the extent such information is available.

(2) A narrative of land capability and productivity, which analyzes the land use description under paragraph (a) of this section in conjunction with other environmental resources information. The narrative shall provide analyses of:

(i) The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover, and the hydrology of the proposed permit area; and

(ii) The productivity of the proposed permit area before mining, expressed as average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, state agricultural universities, or appropriate state natural resource or agricultural agencies.

(b) Each plan shall contain a detailed description of the proposed use, following reclamation, of the land within the proposed permit area, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use of existing land use policies and plans. This description shall explain:

(1) How the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

(2) Where a land use different from the premining land use is proposed, all materials needed for approval of the alternative use under 4VAC25-130-816.133; and

(3) The consideration which has been given to making all of the proposed surface mining activities consistent with surface owner plans and applicable state and local land use plans and programs.

(c) The description shall be accompanied by a copy of the comments concerning the proposed use by the legal or equitable owner of record of the surface of the proposed permit area and the state and local government agencies which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 784.15, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 15, Issue 6, eff. January 6, 1999.

4VAC25-130-784.16. Reclamation plan; siltation structures, impoundments, banks, dams, and embankments.

(a) General. Each application shall include a general plan and a detailed design plan for each proposed siltation structure, water impoundment, and coal processing waste bank, dam, or embankment within the proposed permit area.

(1) Each general plan shall-

- (i) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer, or by a certified professional geologist with assistance from experts in related fields, such as land surveying and landscape architecture;
- (ii) Contain a description, map, and cross section of the structure and its location;
- (iii) Contain preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure;
- (iv) Contain a survey describing the potential effect on the structure from subsidence of the subsurface strata resulting from any past underground mining operations; and
- (v) Contain a certification statement which includes a schedule of the dates that any detailed design plans for structures that are not submitted with the general plan will be submitted to the division. The division shall have approved, in writing, the detailed design plan for the structure before construction of the structure begins.

(2) Impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210-VI-TR60, Oct. 1985), "Earth Dams and Reservoirs," Technical Release No. 60 (TR-60) shall comply with the requirements of this section for structures that meet or exceed the size of other criteria of the Mine Safety and Health Administration. The technical release is hereby incorporated by reference. Copies may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, Order No. PB 87-157509/AS. Copies can be inspected at the OSM Headquarters Office, Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 660, 800 North Capitol Street, Washington, D.C. or at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, D.C. Each detailed design plan for a structure that meets or exceeds the size or other criteria of the Mine Safety and Health Administration, 30 CFR 77.216(a), shall—

- (i) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer with assistance from experts in related fields, such as geology, land surveying, and landscape architecture;
- (ii) Include any geotechnical investigation, design, and construction requirements for the structure;
- (iii) Describe the operation and maintenance requirements for each structure; and
- (iv) Describe the timetable and plans to remove each structure, if appropriate.

(3) Each detailed design plan for structures not included in paragraph (a)(2) of this section shall—

- (i) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer or registered land surveyor except that all coal processing waste dams and embankments covered by 4VAC25-130-817.81 through 4VAC25-130-817.84 shall be certified by a qualified registered professional engineer;
- (ii) Include any design and construction requirements for the structure, including any required geotechnical information;
- (iii) Describe the operation and maintenance requirements for each structure; and
- (iv) Describe the timetable and plans to remove each structure, if appropriate.

(b) Siltation structures. Siltation structures shall be designed in compliance with the requirements of 4VAC25-130-817.46.

(c) Permanent and temporary impoundments.

(1) Permanent and temporary impoundments shall be designed to comply with the requirements of 4VAC25-130-817.49.

(2) Each plan for an impoundment meeting the size or other criteria of the Mine Safety and Health Administration shall comply with the requirements of 30 CFR 77.216-1 and 77.216-2. The plan required to be submitted to the District Manager of MSHA under 30 CFR 77.216 shall be submitted to the division as part of the permit application in accordance with paragraph (a) of this section.

(3) For impoundments not included in paragraph (a)(2) of this section the division may establish engineering design standards that ensure stability comparable to a 1.3 minimum static safety factor in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 specified in 4VAC25-130-817.49(a)(4)(ii).

(d) Coal processing waste banks. Coal processing waste banks shall be designed to comply with the requirements of 4VAC25-130-817.81 through 4VAC25-130-817.84.

(e) Coal processing waste dams and embankments. Coal processing waste dams and embankments shall be designed to comply with the requirements of 4VAC25-130-817.81 through 4VAC25-130-817.84. Each plan shall comply with the requirements of the Mine Safety and

Health Administration, 30 CFR 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

- (1) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.
 - (2) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.
 - (3) All springs, seepage, and ground water flow observed or anticipated during wet periods, in the area of the proposed dam or embankment shall be identified on each plan.
 - (4) Consideration shall be given to the possibility of mud flows, rock debris, falls, or other landslides into the dam, embankment, or impounded material.
- (f) If the structure meets the Class B or C criteria for dams in TR-60 or meets the size or other criteria of 30 CFR 77.216(a), each plan under paragraphs (b), (c), and (e) of this section shall include a stability analysis of each structure. The stability analysis shall include, but not be limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 784.16, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 15, Issue 6, eff. January 6, 1999.

4VAC25-130-784.17. Protection of public parks and historic places.

(a) For any publicly owned parks or any places listed on the National Register of Historic Places that may be adversely affected by the proposed operation, each plan shall describe the measures to be used --

- (1) To prevent adverse impacts, or
 - (2) If valid existing rights exist or joint agency approval is to be obtained under 4VAC25-130-761.12(f), to minimize impacts.
- (b) The division may require the applicant to protect historic and archaeological properties listed on or eligible for listing on the National Register of Historic Places through appropriate

mitigation and treatment measures. Appropriate mitigation and treatment measures may be required to be taken after permit issuance provided that the required measures are completed before the properties are affected by any mining operation.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 784.17, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-784.18. Relocation or use of public roads.

Each application shall describe, with appropriate maps and cross-sections, the measures to be used to ensure that the interests of the public and land owners affected are protected, if, under 4VAC25-130-761.12(d), the applicant seeks to have the division approve--

- (a) Conducting the proposed underground mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join the right-of-way; or
- (b) Relocating a public road.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 784.18, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-784.19. Underground development waste.

Each application shall contain descriptions, including appropriate maps and cross-section drawings, of the proposed disposal methods and sites for placing underground development waste and excess spoil generated at surface areas affected by surface operations and facilities, according to 4VAC25-130-817.71 through 4VAC25-130-817.75. These plans shall describe the geotechnical investigation, design, construction, operation, maintenance and removal, if appropriate, of the site and structures, and be prepared according to 4VAC25-130-780.35.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 784.19, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16,

1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-784.20. Subsidence control plan.

(a) Presubsidence survey. Each application must include:

(1) A map of the permit and adjacent areas at a scale of 1:12,000, or larger if determined necessary by the division, showing the location and type of structures and renewable resource lands that subsidence may materially damage or for which the value or reasonably foreseeable use may be diminished by subsidence, and showing the location and type of drinking, domestic, and residential water supplies that could be contaminated, diminished, or interrupted by subsidence.

(2) A narrative indicating whether subsidence, if it occurred, could cause material damage to or diminish the value or reasonably foreseeable use of such structures or renewable resource lands or could contaminate, diminish, or interrupt drinking, domestic, or residential water supplies.

(3) A survey of the quantity and quality of all drinking, domestic and residential water supplies within the permit area and adjacent area that could be contaminated, diminished or interrupted by subsidence. If the applicant cannot make this survey because the owner will not allow access to the site, the applicant will notify the owner in writing of the effect that denial of access will have pursuant to § 45.1-258 D of the Code of Virginia, as amended. The applicant must pay for any technical assessment or engineering evaluation used to determine the quantity and quality of drinking, domestic, or residential water supplies. The applicant must provide copies of the survey and any technical assessment or engineering evaluation to the property owner and the division.

(b) Subsidence control plan. If the survey conducted under subsection (a) of this section shows that no structures, or drinking, domestic, or residential water supplies, or renewable resource lands exist, or that no material damage or diminution in value or reasonably foreseeable use of such structures or lands, and no contamination, diminution or interruption of such water supplies would occur as a result of mine subsidence, and if the division agrees with this conclusion, no further information need be provided under this section. If the survey shows that structures, renewable resource lands, or water supplies exist and that subsidence could cause material damage or diminution in value or reasonably foreseeable use, or contamination, diminution or interruption of protected water supplies, or if the division determines that damage, diminution, in value or foreseeable use, or contamination, diminution, or interruption could occur, the application must include a subsidence control plan that contains the following information:

(1) A description of the method of coal removal, such as longwall mining, room-and-pillar removal or hydraulic mining including the size, sequence and timing of the development of underground workings;

(2) A map of the underground workings that describes the location and extent of the areas in which planned subsidence mining methods will be used and that identifies all areas where the

measures described in subdivisions (b) (4), (b) (5), and (b) (7) of this section will be taken to prevent or minimize subsidence and subsidence related damage; and, when applicable, to correct subsidence related material damage;

(3) A description of the physical conditions, such as depth of cover, seam thickness and lithology of overlaying strata, that affects the likelihood or extent of subsidence and subsidence related damage;

(4) A description of the monitoring, if any, needed to determine the commencement and degree of subsidence so that, when appropriate, other measures can be taken to prevent, reduce, or correct material damage in accordance with 4VAC25-130-817.121 (c).

(5) Except for those areas where planned subsidence is projected to be used, a detailed description of the subsidence control measures that will be taken to prevent or minimize subsidence and subsidence related damage, such as, but not limited to:

(i) Backstowing or backfilling of voids;

(ii) Leaving support pillars of coal;

(iii) Leaving areas in which no coal is removed, including a description of the overlying area to be protected by leaving coal in place; and

(iv) Taking measures on the surface to prevent or minimize material damage or diminution in value of the surface.

(6) A description of the anticipated effects of planned subsidence, if any.

(7) For those areas where planned subsidence is projected to be used, a description of methods to be employed to minimize damage from planned subsidence to noncommercial buildings and occupied residential dwellings and structures related thereto; or the written consent of the owner of the structure or facility that minimization measures not be taken; or, unless the anticipated damage would constitute a threat to health or safety, a demonstration that the costs of minimizing damage exceed the anticipated costs or repair.

(8) A description of the measures to be taken in accordance with 4VAC25-130-817.41 (j) and 4VAC25-130-817.121 (c) to replace adversely affected protected water supplies or to mitigate or remedy any subsidence related material damage to the land and protected structures.

(9) Other information specified by the division as necessary to demonstrate that the operation will be conducted in accordance with 4VAC25-130-817.121.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 784.20, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July

17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 14, Issue 5, eff. December 24, 1997; Errata, 14:10 VA.R. 1751 February 2, 1998; amended, Virginia Register Volume 23, Issue 13, eff. April 4, 2007.

4VAC25-130-784.21. Fish and wildlife information.

(a) Resource information. Each application shall include fish and wildlife resource information for the permit area and adjacent area.

(1) The scope and level of detail for such information shall be determined by the division in consultation with State and Federal agencies with responsibilities for fish and wildlife and shall be sufficient to design the protection and enhancement plan required under Paragraph (b) of this section.

(2) Site-specific resource information necessary to address the respective species or habitats shall be required when the permit area or adjacent area is likely to include:

(i) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary under the Endangered Species Act of 1973, as amended (16 USC § 1531 et seq.), or those species or habitats protected by similar State statutes;

(ii) Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas; or

(iii) Other species or habitats identified through agency consultation as requiring special protection under State or Federal law.

(b) Protection and enhancement plan. Each application shall include a description of how, to the extent possible using the best technology currently available, the operator will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, during the surface coal mining and reclamation operations and how enhancement of these resources will be achieved where practicable. This description shall-

(1) Be consistent with the requirements of 4VAC25-130-817.97;

(2) Apply, at a minimum, to species and habitats identified under Paragraph (a) of this section; and

(3) Include-

(i) Protective measures that will be used during the active mining phase of operation. Such measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines, and the monitoring of surface water quality and quantity; and

(ii) Enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Such measures may include

restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the placement of perches and nest boxes. Where the plan does not include enhancement measures, a statement shall be given explaining why enhancement is not practicable.

(c) Fish and Wildlife Service Review. Upon request, the division shall provide the resource information required under Paragraph (a) of this section and the protection and enhancement plan required under Paragraph (b) of this section to the U.S. Department of the Interior, Fish and Wildlife Service Regional or Field Office for their review. This information shall be provided within 10 days of receipt of the request from the Service.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 784.21, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-784.22. Geologic information.

(a) General. Each application shall include geologic information in sufficient detail to assist in-

- (1) Determining the probable hydrologic consequences of the operation upon the quality and quantity of surface and ground water in the permit and adjacent areas, including the extent to which surface- and ground-water monitoring is necessary;
- (2) Determining all potentially acid- or toxic-forming strata down to and including the stratum immediately below the coal seam to be mined;
- (3) Determining whether reclamation as required by this chapter can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area; and
- (4) Preparing the subsidence control plan under 4VAC25-130-784.20.

(b) Geologic information shall include, at a minimum, the following:

- (1) A description of the geology of the proposed permit and adjacent areas down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest coal seam to be mined which may be adversely impacted by mining. This description shall include the areal and structural geology of the permit and adjacent areas, and other parameters which influence the required reclamation and it shall also show how the areal and structural geology may affect the occurrence, availability, movement, quantity and quality of potentially impacted surface and ground water. It shall be based on-

- (i) The cross sections, maps, and plans required by 4VAC25-130-783.25;

- (ii) The information obtained under Paragraphs (b)(2), (b)(3), and (c) of this section; and
- (iii) Geologic literature and practices.

(2) For any portion of a permit area in which the strata down to the coal seam to be mined will be removed or are already exposed, samples shall be collected and analyzed from test borings; drill cores; or fresh, unweathered, uncontaminated samples from rock outcrops down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest coal seam to be mined which may be adversely impacted by mining. The analyses shall result in the following:

- (i) Logs showing the lithologic characteristics including physical properties and thickness of each stratum and location of ground water where occurring;
- (ii) Chemical analyses identifying those strata that may contain acid- or toxic-forming, or alkalinity-producing materials and to determine their content except that the division may find that the analysis for alkalinity-producing material is unnecessary; and
- (iii) Chemical analysis of the coal seam for acid- or toxic-forming materials, including the total sulfur and pyritic sulfur, except that the division may find that the analysis of pyritic sulfur content is unnecessary.

(3) For lands within the permit and adjacent areas where the strata above the coal seam to be mined will not be removed, samples shall be collected and analyzed from test borings or drill cores to provide the following data:

- (i) Logs of drill holes showing the lithologic characteristics, including physical properties and thickness of each stratum that may be impacted, and location of ground water where occurring;
- (ii) Chemical analyses for acid- or toxic-forming or alkalinity-producing materials and their content in the strata immediately above and below the coal seam to be mined;
- (iii) Chemical analyses of the coal seam for acid- or toxic-forming materials, including the total sulfur and pyritic sulfur, except that the division may find that the analysis of pyrite sulfur content is unnecessary; and
- (iv) For standard room and pillar mining operations, the thickness and engineering properties of clays or soft rock such as clay shale, if any, in the stratum immediately above and below each coal seam to be mined.

(c) If determined to be necessary to protect the hydrologic balance, to minimize or prevent subsidence, or to meet the performance standards of this chapter, the division may require the collection, analysis and description of geologic information in addition to that required by Paragraph (b) of this section.

(d) An applicant may request the division to waive in whole or in part the requirements of Paragraphs (b)(2) and (b)(3) of this section. The waiver may be granted only if the division finds in writing that the collection and analysis of such data is unnecessary because other information having equal value or effect is available to the division in a satisfactory form.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 784.22, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-784.23. Operation plan; maps and plans.

Each application shall contain maps and plans as follows:

- (a) The maps, plans and cross sections shall show the land proposed to be affected throughout the operation, the underground mining activities to be conducted, and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under 4VAC25-130-783.24 and 4VAC25-130-783.25.
- (b) The following shall be shown for the proposed permit area:
 - (1) Buildings, utility corridors and facilities to be used;
 - (2) The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;
 - (3) Each area of land for which a performance bond or other equivalent guarantee will be posted under Subchapter VJ;
 - (4) Each coal storage, cleaning and loading area;
 - (5) Each topsoil, spoil, coal preparation waste, underground development waste, and noncoal waste storage area;
 - (6) Each water diversion, collection, conveyance, treatment, storage, and discharge facility to be used;
 - (7) Each source of waste and each waste disposal facility relating to coal processing or pollution control;
 - (8) Each facility to be used to protect and enhance fish and wildlife and related environmental values;
 - (9) Each explosive storage and handling facility;
 - (10) Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with 4VAC25-130-784.16 and disposal areas for underground development waste and excess spoil, in accordance with 4VAC25-130-784.19;
 - (11) Each profile, at cross sections specified by the division, of the anticipated final surface configuration to be achieved for the affected areas;

(12) Location of each water and subsidence monitoring point; and

(13) Location of each facility that will remain on the proposed permit area as a permanent feature, after the completion of underground mining activities.

(c) Maps, plans, and cross sections required under paragraphs (b) (4), (5), (6), (10), and (11) of this section shall be prepared by, or under the direction of and certified by a qualified registered professional engineer, or certified professional geologist, with assistance from experts in related fields, such as land surveying and landscape architecture, except that—

(1) Maps, plans, and cross sections for sedimentation ponds may only be prepared by a qualified registered professional engineer and;

(2) Excess spoil and underground development waste facilities maps, plans, and cross sections may only be prepared by a qualified registered professional engineer.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 784.23, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 15, Issue 6, eff. January 6, 1999.

4VAC25-130-784.24. Road systems.

(a) Plans and drawings. Each applicant for an underground coal mining and reclamation permit shall submit plans and drawings for each road, as defined in 4VAC25-130-700.5, to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall

(1) Include a map, appropriate cross sections, design drawings, and specifications for road widths, gradients, surfacing materials, cuts, fill embankments, culverts, bridges, drainage ditches, low-water crossings, and drainage structures;

(2) Contain the drawings and specifications of each proposed road that is located in the channel of an intermittent or perennial stream, as necessary for approval of the road by the division in accordance with 4VAC25-130-817.150(d)(1);

(3) Contain the drawings and specifications for each proposed ford of perennial or intermittent streams that is used as a temporary route, as necessary for approval of the ford by the division in accordance with 4VAC25-130-817.151(c)(2);

(4) Contain a description of measures to be taken to obtain approval of the division for alteration or relocation of a natural stream channel under 4VAC25-130-817.151(d)(5);

(5) Contain the drawings and specifications for each low-water crossing of perennial or intermittent stream channels so that the division can maximize the protection of the stream

in accordance with 4VAC25-130-817.151(d)(6); and

(6) Describe the plans to remove and reclaim each road that would not be retained under an approved postmining land use, and the schedule for this removal and reclamation.

(b) Primary road certification. The plans and drawings for each primary road shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer, or a qualified registered professional land surveyor, experienced in the design and construction of roads, as meeting the requirements of this chapter; current, prudent engineering practices; and any design criteria established by the division.

(c) Geotechnical analysis. A report of appropriate geotechnical analysis shall be submitted, where approval of the division is required for alternative specifications, or for steep cut slopes under 4VAC25-130-817.150 and 4VAC25-130-817.151.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 784.24, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-784.25. Return of coal processing waste to abandoned underground workings.

(a) Each plan shall describe the design, operation and maintenance of any proposed coal processing waste disposal facility, including flow diagrams and any other necessary drawings and maps, for the approval of the division and the Mine Safety and Health Administration under 4VAC25-130-817.81(f).

(b) Each plan shall describe the source and quality of waste to be stowed, area to be backfilled, percent of the mine void to be filled, method of constructing underground retaining walls, influence of the backfilling operation on active underground mine operations, surface area to be supported by the backfill, and the anticipated occurrence of surface effects following backfilling.

(c) The applicant shall describe the source of the hydraulic transport mediums, method of dewatering the placed backfill, retainment of water underground, treatment of water if released to surface streams, and the effect on the hydrologic regime.

(d) The plan shall describe each permanent monitoring well to be located in the backfilled area, the stratum underlying the mined coal, and gradient from the backfilled area.

(e) The requirements of Paragraphs (a), (b), (c), and (d) of this section shall also apply to pneumatic backfilling operations, except where the operations are exempted by the division from requirements specifying hydrologic monitoring.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 784.25, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-784.29. Diversions.

Each application shall contain descriptions, including maps and cross-sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 4VAC25-130-817.43.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 784.29, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-784.30. Support facilities.

Each applicant for an underground coal mining and reclamation permit shall submit a description, plans, and drawings for each support facility to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall include a map, appropriate cross sections, design drawings, and specifications sufficient to demonstrate compliance with 4VAC25-130-817.181 for each facility.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 784.30, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

Part 785

Requirements for Permits for Special Categories of Mining

4VAC25-130-785.1. Scope.

These requirements are in addition to the general permit requirements contained in this Subchapter VG. All of the provisions of Subchapter VG apply to these operations, unless otherwise specifically provided in this Part.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 785.1, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-785.13. Experimental practices mining.

(a) Experimental practices provide a variance from environmental protection performance standards of the Act, of Subchapter VK, and the regulatory program for experimental or research purposes, or to allow an alternative postmining land use, and may be undertaken if they are approved by the division and the Director of the OSM and if they are incorporated in a permit or permit revision issued in accordance with the requirements of Subchapter VG.

(b) An application for an experimental practice shall contain descriptions, maps, plans, and data which show--

(1) The nature of the experimental practice, including a description of the performance standards for which variances are requested, the duration of the experimental practice, and any special monitoring which will be conducted;

(2) How use of the experimental practice encourages advances in mining and reclamation technology or allows a postmining land use for industrial, commercial, residential, or public use (including recreation facilities) on an experimental basis;

(3) That the experimental practice--

(i) Is potentially more, or at least as, environmentally protective, during and after mining operations, as would otherwise be required by standards promulgated under Subchapter VK; and

(ii) Will not reduce the protection afforded public health and safety below that provided by the requirements of Subchapter VK; and

(4) That the applicant will conduct monitoring of the effects of the experimental practice. The monitoring program shall ensure the collection, analysis, and reporting of reliable data that are sufficient to enable the division and the Director of the OSM to--

(i) Evaluate the effectiveness of the experimental practice; and

(ii) Identify, at the earliest possible time, potential risk to the environment and public health and safety which may be caused by the experimental practice during and after mining.

(c) Applications for experimental practices shall comply with the public notice requirements of 4VAC25-130-773.13.

(d) No application for an experimental practice under this section shall be approved until the division first finds in writing and the Director of the OSM then concurs that--

- (1) The experimental practice encourages advances in mining and reclamation technology or allows a postmining land use for industrial, commercial, residential, or public use (including recreational facilities) on an experimental basis;
- (2) The experimental practice is potentially more, or at least as, environmentally protective, during and after mining operations, as would otherwise be required by standards promulgated under Subchapter VK;
- (3) The mining operations approved for a particular land-use or other purpose are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practice; and
- (4) The experimental practice does not reduce the protection afforded public health and safety below that provided by standards promulgated under Subchapter VK.

(e) Experimental practices granting variances from the special environmental protection performance standards of Sections 515 and 516 of the Federal Act applicable to prime farmlands shall be approved only after consultation with the U.S. Department of Agriculture, Natural Resources Conservation Service.

(f) Each person undertaking an experimental practice shall conduct the periodic monitoring, recording and reporting program set forth in the application, and shall satisfy such additional requirements as the division or the Director of the OSM may impose to ensure protection of the public health and safety and the environment.

(g) Each experimental practice shall be reviewed by the division at a frequency set forth in the approved permit, but no less frequently than every 2 ½ years. After review, the division may require such reasonable modifications of the experimental practice as are necessary to ensure that the activities fully protect the environment and the public health and safety. Copies of the decision of the division shall be sent to the permittee and shall be subject to the provisions for administrative and judicial review of Part 775.

(h) Revisions or modifications to an experimental practice shall be processed in accordance with the requirements of 4VAC25-130-774.13 and approved by the division. Any revisions which propose significant alterations in the experimental practice shall, at a minimum, be subject to notice, hearing, and public participation requirements of 4VAC25-130-773.13 and concurrence by the Director of the OSM. Revisions that do not propose significant alterations in the experimental practice shall not require concurrence by the Director of the OSM.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 785.13, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-785.14. Mountaintop removal mining.

(a) This section applies to any person who conducts or intends to conduct surface mining

activities by mountaintop removal mining.

(b) Mountaintop removal mining means surface mining activities, where the mining operation removes an entire coal seam or seams running throughout the upper fraction of a mountain, ridge, or hill, except as provided for in 4VAC25-130-824.11(a)(6), by removing substantially all of the overburden off the bench and creating a level plateau or a gently rolling contour, with no highwalls remaining, and capable of supporting postmining land use in accordance with the requirements of this section.

(c) The division may issue a permit for mountaintop removal mining, without regard to the requirements of 4VAC25-130-816.102, 4VAC25-130-816.104, 4VAC25-130-816.105, and 4VAC25-130-816.107 to restore the lands disturbed by such mining to their approximate original contour, if it first finds, in writing, on the basis of a complete application, that the following requirements are met:

(1) The proposed postmining land use of the lands to be affected will be an industrial, commercial, agricultural, residential, or public facility (including recreational facilities) use and, if:

(i) After consultation with the appropriate land-use planning agencies, if any, the proposed land use is deemed by the division to constitute an equal or better economic or public use of the affected land compared with the premining use;

(ii) The applicant demonstrates compliance with the requirements for acceptable alternative postmining land uses of Paragraphs (a) through (c) of 4VAC25-130-816.133;

(iii) The applicant has presented specific plans for the proposed postmining land use and appropriate assurances that such use will be:

(A) Compatible with adjacent land uses;

(B) Obtainable according to data regarding expected need and market;

(C) Assured of investment in necessary public facilities;

(D) Supported by commitments from public agencies where appropriate;

(E) Practicable with respect to private financial capability for completion of the proposed use;

(F) Planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the postmining land use; and

(G) Designed by a registered engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site;

(iv) The proposed use would be compatible with adjacent land uses and existing State and local land use plans and programs; and

(v) The division has provided, in writing, an opportunity of not more than 60 days to review and comment on such proposed use to the governing body of general purpose

government in whose jurisdiction the land is located and any State or Federal agency which the division in its discretion, determines to have an interest in the proposed use.

(2) The applicant demonstrates that in place of restoration of the land to be affected to the approximate original contour under 4VAC25-130-816.102, 4VAC25-130-816.104, 4VAC25-130-816.105, and 4VAC25-130-816.107, the operation will be conducted in compliance with the requirements of Part 824.

(3) The requirements of Part 824 are made a specific condition of the permit.

(4) All other requirements of the Act, this chapter, and the regulatory program are met by the proposed operations.

(5) The permit is clearly identified as being for mountaintop removal mining.

(d)(1) Any permits incorporating a variance issued under this section shall be reviewed by the division to evaluate the progress and development of mining activities to establish that the permittee is proceeding in accordance with the terms of the variance:

(i) Within the thirtieth month from the date of its issuance;

(ii) Before each permit renewal; and

(iii) Not later than the middle of each permit term.

(2) Any review required under Paragraph (d)(1) of this section need not be held if the permittee has demonstrated and the division finds, in writing, within three months before the scheduled review, that all operations under the permit are proceeding and will continue to be conducted in accordance with the terms of the permit and requirements of the Act, this chapter, and the regulatory program.

(3) The terms and conditions of a permit for mountaintop removal mining may be modified at any time by the division, if it determines that more stringent measures are necessary to insure that the operation involved is conducted in compliance with the requirements of the Act, this chapter, and the regulatory program.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 785.14, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-785.15. Steep slope mining.

(a) This section applies to any person who conducts or intends to conduct steep slope surface coal mining and reclamation operations, except:

(1) Where a permittee proposes to conduct surface coal mining and reclamation operations on

flat or gently rolling terrain, leaving a plain or predominantly flat area, but on which an occasional steep slope is encountered as the mining operation proceeds;

(2) Where a person obtains a permit under the provisions of 4VAC25-130-785.14, or

(3) To the extent that a person obtains a permit incorporating a variance under 4VAC25-130-785.16.

(b) Any application for a permit for surface coal mining and reclamation operations covered by this section shall contain sufficient information to establish that the operations will be conducted in accordance with the requirements of 4VAC25-130-816.107.

(c) No permit shall be issued for any operations covered by this section, unless the division finds, in writing, that in addition to meeting all other requirements of this Subchapter, the operation will be conducted in accordance with the requirements of 4VAC25-130-816.107.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 785.15, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-785.16. Permits incorporating variances from approximate original contour restoration requirements for steep slope mining.

(a) The division may issue a permit for nonmountaintop removal, steep slope mining which includes a variance from the requirements of 4VAC25-130-816.102, 4VAC25-130-816.104, 4VAC25-130-816.105, and 4VAC25-130-816.107 or 4VAC25-130-817.102 and 4VAC25-130-817.107 to restore the disturbed areas to their approximate original contour. The permit may contain such a variance only if the division finds, in writing, that the applicant has demonstrated, on the basis of a complete application, that the following requirements are met:

(1) After reclamation, the lands to be affected by the variance within the permit area will be suitable for an industrial, commercial, residential, or public postmining land use (including recreational facilities).

(2) The requirements of 4VAC25-130-816.133 or 4VAC25-130-817.133 will be met.

(3) The watershed of lands within the proposed permit and adjacent areas will be improved by the operations when compared with the condition of the watershed before mining or with its condition if the approximate original contour were to be restored. The watershed will be deemed improved only if--

(i) The amount of total suspended solids or other pollutants discharged to ground or surface water from the permit area will be reduced, so as to improve the public or private uses or the ecology of such water, or flood hazards within the watershed containing the permit area will be reduced by reduction of the peak flow discharge from precipitation

events or thaws;

(ii) The total volume of flow from the proposed permit area, during every season of the year, will not vary in a way that adversely affects the ecology of any surface water or any existing or planned use of surface or ground water; and

(iii) The appropriate State environmental agencies approve the plan.

(4) The owner of the surface of the lands within the permit area has knowingly requested, in writing, as part of the application, that a variance be granted. The request shall be made separately from any surface owner consent given for the operations under 4VAC25-130-778.15 and shall show an understanding that the variance could not be granted without the surface owner's request.

(b) If a variance is granted under this section--

(1) The requirements of 4VAC25-130-816.133(d) or 4VAC25-130-817.133(d) shall be included as a specific condition of the permit; and

(2) The permit shall be specifically marked as containing a variance from approximate original contour.

(c) A permit incorporating a variance under this section shall be reviewed by the division at least every 30 months following the issuance of the permit to evaluate the progress and development of the surface coal mining and reclamation operations to establish that the permittee is proceeding in accordance with the terms of the variance.

(d) If the permittee demonstrates to the division that the operations have been, and continue to be, conducted in compliance with the terms and conditions of the permit, the requirements of the Act, this chapter, and the regulatory program, the review specified in Paragraph (c) of this section need not be held.

(e) The terms and conditions of a permit incorporating a variance under this section may be modified at any time by the division, if it determines that more stringent measures are necessary to ensure that the operations involved are conducted in compliance with the requirements of the Act, this chapter, and the regulatory program.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 785.16, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-785.17. Prime farmland.

(a) This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations on prime farmlands historically used for cropland. This section does not apply to:

(1) Lands on which surface coal mining and reclamation operations are conducted pursuant to any permit issued prior to August 3, 1977; or

(2) Lands on which surface coal mining and reclamation operations are conducted pursuant to any renewal or revision of a permit issued prior to August 3, 1977; or

(3) Lands included in any existing surface coal mining operations for which a permit was issued for all or any part thereof prior to August 3, 1977, provided that:

(i) Such lands are part of a single continuous surface coal mining operation begun under a permit issued before August 3, 1977; and

(ii) The permittee had a legal right to mine the lands prior to August 3, 1977, through ownership, contract, or lease but not including an option to buy, lease, or contract; and

(iii) The lands contain part of a continuous recoverable coal seam that was being mined in a single continuous mining pit (or multiple pits if the lands are proven to be part of a single continuous surface coal mining operation) begun under a permit issued prior to August 3, 1977.

(4) For purposes of this section:

(i) "Renewal" of a permit shall mean a decision by the division to extend the time by which the permittee may complete mining within the boundaries of the original permit, and "revision" of the permit shall mean a decision by the division to allow changes in the method of mining operations within the original permit area, or the decision of the division to allow incidental boundary changes to the original permit;

(ii) A pit shall be deemed to be a single continuous mining pit even if portions of the pit are crossed by a road, pipeline, railroad, or powerline or similar crossing;

(iii) A single continuous surface coal mining operation is presumed to consist only of a single continuous mining pit under a permit issued prior to August 3, 1977, but may include non-contiguous parcels if the permittee can prove by clear and convincing evidence that, prior to August 3, 1977, the noncontiguous parcels were part of a single permitted operation. For the purposes of this Paragraph, clear and convincing evidence includes, but is not limited to, contracts, leases, deeds or other properly executed legal documents (not including options) that specifically treat physically separate parcels as one surface coal mining operation.

(b) Application contents-reconnaissance inspection.

(1) All permit applications, whether or not prime farmland is present, shall include the results of a reconnaissance inspection of the proposed permit area to indicate whether prime farmland exists. The division in consultation with the U.S. Soil Conservation Service shall determine the nature and extent of the required reconnaissance inspection.

(2) If the reconnaissance inspection establishes that no land within the proposed permit area is prime farmland historically used for cropland, the applicant shall submit a statement that

no prime farmland is present. The statement shall identify the basis upon which such a conclusion was reached.

(3) If the reconnaissance inspection indicates that land within the proposed permit area may be prime farmland historically used for cropland, the applicant shall determine if a soil survey exists for those lands and whether soil mapping units in the permit area have been designated as prime farmland. If no soil survey exists, the applicant shall have a soil survey made of the lands within the permit area which the reconnaissance inspection indicates could be prime farmland. Soil surveys of the detail used by the U.S. Natural Resources Conservation Service for operational conservation planning shall be used to identify and locate prime farmland soils.

(i) If the soil survey indicates that no prime farmland soils are present within the proposed permit area, Paragraph (b)(2) of this section shall apply.

(ii) If the soil survey indicates that prime farmland soils are present within the proposed permit area, Paragraph (c) of this section shall apply.

(c) Application contents-prime farmland. All permit applications for areas in which prime farmland has been identified within the proposed permit area shall include the following:

(1) A soil survey of the permit area according to the standards of the National Cooperative Soil Survey and in accordance with the procedures set forth in U.S. Department of Agriculture Handbooks 436 "Soil Taxonomy" (U.S. Soil Conservation Service, 1975) as amended on March 22, 1982 and October 5, 1982, and 18, "Soil Survey Manual" (U.S. Soil Conservation Service, 1951), as amended on December 18, 1979, May 7, 1980, May 9, 1980, September 11, 1980, June 9, 1981, June 29, 1981, November 16, 1982. The U.S. Natural Resources Conservation Service establishes the standards of the National Cooperative Soil Survey and maintains a National Soils Handbook which gives current acceptable procedures for conducting soil surveys. This National Soils Handbook is available for review at area and State NRCS offices.

(i) U.S. Department of Agriculture Handbooks 436 and 18 are incorporated by reference.

(ii) The soil survey shall include a description of soil mapping units and a representative soil profile as determined by the U.S. Natural Resources Conservation Service, including, but not limited to, soil-horizon depths, pH, and the range of soil densities for each prime farmland soil unit within the permit area. Other representative soil-profile descriptions from the locality, prepared according to the standards of the National Cooperative Soil Survey, may be used if their use is approved by the State Conservationist, U.S. Natural Resources Conservation Service. The division may request the applicant to provide information on other physical and chemical soil properties as needed to make a determination that the applicant has the technological capability to restore the prime farmland within the permit area to the soil-reconstruction standards of Part 823.

(2) A plan for soil reconstruction, replacement, and stabilization for the purpose of establishing the technological capability of the permittee to comply with the requirements of

Part 823.

(3) Scientific data, such as agricultural-school studies, for areas with comparable soils, climate, and management that demonstrate that the proposed method of reclamation, including the use of soil mixtures or substitutes, if any, will achieve, within a reasonable time, levels of yield equivalent to, or higher than, those of nonmined prime farmland in the surrounding area.

(4) The productivity prior to mining, including the average yield of food, fiber, forage, or wood products obtained under a high level of management.

(d) Consultation with the U.S. Secretary of Agriculture.

(1) The U.S. Secretary of Agriculture has responsibilities with respect to prime farmland soils and has assigned the prime farmland responsibilities arising under the Federal Act to the Chief of the U.S. Natural Resources Conservation Service. The U.S. Natural Resources Conservation Service shall carry out consultation and review through the State Conservationist located in each State.

(2) The State Conservationist shall provide to the division a list of prime farmland soils, their location, physical and chemical characteristics, crop yields, and associated data necessary to support adequate prime farmland soil descriptions.

(3) The State Conservationist shall assist the division in describing the nature and extent of the reconnaissance inspection required in Paragraph (b)(1) of this section.

(4) Before any permit is issued for areas that include prime farmland, the division shall consult with the State Conservationist. The State Conservationist shall provide for the review of, and comment on, the proposed method of soil reconstruction in the plan submitted under Paragraph (c) of this section. If the State Conservationist considers those methods to be inadequate, he shall suggest revisions to the division which result in more complete and adequate reconstruction.

(e) Issuance of permit. A permit for the mining and reclamation of prime farmland may be granted by the division if it first finds, in writing, upon the basis of a complete application, that:

(1) The approved proposed postmining land use of these prime farmlands will be cropland;

(2) The permit incorporates as specific conditions the contents of the plan submitted under Paragraph (c) of this section, after consideration of any revisions to that plan suggested by the State Conservationist under Paragraph (d)(4) of this section.

(3) The applicant has the technological capability to restore the prime farmland, within a reasonable time, to equivalent or higher levels of yield as non-mined prime farmland in the surrounding area under equivalent levels of management; and

(4) The proposed operations will be conducted in compliance with the requirements of Part 823 and other environmental protection performance and reclamation standards for mining and reclamation of prime farmland of the regulatory program.

(5) The aggregate total prime farmland acreage shall not be decreased from that which existed prior to mining. Water bodies, if any, to be constructed during mining and reclamation operations must be located within the post-reclamation non-prime farmland portions of the permit area. The creation of any such water bodies must be approved by the division and the consent of all affected property owners within the permit area must be obtained.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 785.17, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-785.18. Variances for delay in contemporaneous reclamation requirement in combined surface and underground mining activities.

(a) Scope. This section shall apply to any person or persons conducting or intending to conduct combined surface and underground mining activities where a variance is requested from the contemporaneous reclamation requirements of 4VAC25-130-816.100.

(b) Application contents for variances. Any person desiring a variance under this section shall file with the division complete applications for both the surface mining activities and underground mining activities which are to be combined. The reclamation and operation plans for these permits shall contain appropriate narratives, maps, and plans, which-

- (1) Show why the proposed underground mining activities are necessary or desirable to assure maximum practical recovery of the coal;
- (2) Show how multiple future disturbances of surface lands or waters will be avoided;
- (3) Identify the specific surface areas for which a variance is sought and the sections of the Act, this chapter, and the regulatory program from which a variance is being sought;
- (4) Show how the activities will comply with 4VAC25-130-816.79 and other applicable requirements of the regulatory program;
- (5) Show why the variance sought is necessary for the implementation of the proposed underground mining activities;
- (6) Provide an assessment of the adverse environmental consequences and damages, if any, that will result if the reclamation of surface mining activities is delayed; and
- (7) Show how offsite storage of spoil will be conducted to comply with the requirements of the Act, 4VAC25-130-816.71 through 4VAC25-130-816.75, and the regulatory program.

(c) Issuance of permit. A permit incorporating a variance under this section may be issued by the division if it first finds, in writing, upon the basis of a complete application filed in accordance with this section, that-

- (1) The applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining activities;
 - (2) The proposed underground mining activities are necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple future disturbances of surface land or waters;
 - (3) The applicant has satisfactorily demonstrated that the applications for the surface mining activities and underground mining activities conform to the requirements of the regulatory program and that all other permits necessary for the underground mining activities have been issued by the appropriate authority;
 - (4) The surface area of surface mining activities proposed for the variance has been shown by the applicant to be necessary for implementing the proposed underground mining activities;
 - (5) No substantial adverse environmental damage, either onsite or offsite, will result from the delay in completion of reclamation otherwise required by Section 515(b)(16) of the Federal Act, Part 816, and the regulatory program;
 - (6) The operations will, insofar as a variance is authorized, be conducted in compliance with the requirements of 4VAC25-130-816.79 and the regulatory program;
 - (7) Provisions for offsite storage of spoil will comply with the requirements of Section 515(b)(22) of the Federal Act, 4VAC25-130-816.71 through 4VAC25-130-816.75, and the regulatory program;
 - (8) Liability under the performance bond required to be filed by the applicant with the division pursuant to Subchapter VJ will be for the duration of the underground mining activities and until all requirements of Subchapter VJ have been complied with; and
 - (9) The permit for the surface mining activities contains specific conditions--
 - (i) Delineating the particular surface areas for which a variance is authorized;
 - (ii) Identifying the applicable provisions of Section 515(b) of the Federal Act, Part 816, and the regulatory program; and
 - (iii) Providing a detailed schedule for compliance with the provisions of this section.
- (d) Review of permits containing variances. Variances granted by permits issued under this section shall be reviewed by the division no later than three years from the dates of issuance of the permit and any permit renewals.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 785.18, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July

17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-785.19. Remining areas with pollution discharges.

(a) Scope.

(1) This section specifies procedures and rules applicable to those who seek authorization to conduct surface coal mining activities on previously mined areas which have been previously affected by mining activities and where there exists continuing water pollution. Receipt of the authorization entitles a permittee to later request bond release for areas which continue to discharge polluttional material.

(2) All provisions of this Subchapter apply to authorizations to mine areas with preexisting polluttional discharges except as specifically modified by this section.

(b) Applicability. No authorization may be granted under this section unless the authorization is part of:

(i) A permit issued after the effective date of this section, or

(ii) A permit revision under 4VAC25-130-774.13, but only if the applicant affirmatively demonstrates to the satisfaction of the division that:

(i) The applicant has not caused or contributed to the polluttional discharges, and

(ii) The applicant has not disturbed the proposed pollution abatement area by surface mining activities.

(c) Application for authorization.

(1) An applicant who requests authorization under this section shall, in addition to the general permit application requirements of this Subchapter:

(i) Delineate on a map the proposed pollution abatement area, including the location of the preexisting discharges.

(ii) Provide a description of the hydrologic balance for the proposed pollution abatement area that includes:

(A) Results of a detailed water quality and quantity monitoring program, including seasonal variations, variations in response to precipitation events, and baseline pollution loads using this monitoring program.

(B) Monitoring for pH, alkalinity, acidity, total iron, total manganese, sulfates, total suspended solids, and other water quality parameters the division deems relevant.

(iii) Provide a description of the abatement plan that represents best technology and includes:

(A) Plans, cross-sections, and schematic drawings describing the abatement plan proposed to be implemented.

(B) A description and explanation of the range of abatement level that probably can be

achieved, costs, and each step in the proposed abatement plan.

(2) An applicant seeking this authorization shall continue the water quality and quantity monitoring program required by Subsection (c)(1) after making the authorization request. The applicant shall submit the results of the continuing monitoring program to the division monthly until a decision on the authorization request is made.

(d) Approval or denial.

(1) No authorization may be granted under this section unless the applicant affirmatively demonstrates to the satisfaction of the division on the basis of information set forth in the application that:

(i) The proposed abatement plan represents best technology.

(ii) The surface mining operation on the proposed pollution abatement area will not cause additional surface water pollution or ground water degradation.

(iii) The requirements of 4VAC25-130-773.15 and 4VAC25-130-773.16 that are not inconsistent with this section have been met.

(iv) The remaining operation will result in the potential for improved water quality from the remaining operation.

(2) An authorization may be denied under this section if granting the authorization will, or is likely to, affect a legal responsibility or liability under this chapter, for the proposed pollution abatement area or other areas or discharges in the vicinity of the proposed pollution abatement area.

(3) No authorization may be granted under this section unless there are one or more preexisting discharges from or on the pollution abatement area.

(4) The authorization allowed under this section is for the pollution abatement area only and does not apply to other areas of the permit.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 785.19, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-785.20. Augering.

(a) This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations utilizing augering operations.

(b) Any application for a permit for operations covered by this section shall contain, in the mining and reclamation plan, a description of the augering methods to be used and the measures

to be used to comply with Part 819.

(c) No permit shall be issued for any operations covered by this section unless the division finds, in writing, that in addition to meeting all other applicable requirements of this Subchapter, the operation will be conducted in compliance with Part 819.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 785.20, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-785.21. Coal preparation plants not located within the permit area of a mine.

(a) This section applies to any person who operates or intends to operate a coal preparation plant in connection with a coal mine but outside the permit area for a specific mine. Any person who operates such a preparation plant shall obtain a permit from the division in accordance with the requirements of this section.

(b) Any application for a permit for operations covered by this section shall contain an operation and reclamation plan which specifies plans, including descriptions, maps, and cross sections, of the construction, operation, maintenance, and removal of the preparation plant and support facilities operated incident thereto or resulting therefrom. The plan shall demonstrate that those operations will be conducted in compliance with Part 827.

(c) No permit shall be issued for any operation covered by this section, unless the division finds in writing that, in addition to meeting all other applicable requirements of this Subchapter, the operations will be conducted in compliance with the requirements of Part 827.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 785.21, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-785.22. In situ processing activities.

(a) This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations utilizing in situ processing activities.

(b) Any application for a permit for operations covered by this section shall be made according to

all requirements of this Subchapter applicable to underground mining activities. In addition, the mining and reclamation operations plan for operations involving in situ processing activities shall contain information establishing how those operations will be conducted in compliance with the requirements of Part 828, including:

- (1) Delineation of proposed holes and wells and production zone for approval of the division;
- (2) Specifications of drill holes and casings proposed to be used;
- (3) A plan for treatment, confinement, or disposal of all acid-forming, toxic-forming or radioactive gases, solids, or liquids constituting a fire, health, safety or environmental hazard caused by the mining and recovery process; and
- (4) Plans for monitoring surface and ground water and air quality as required by the division.

(c) No permit shall be issued for operations covered by this section, unless the division first finds, in writing, upon the basis of a complete application made in accordance with Paragraph (b) of this section, that the operation will be conducted in compliance with all requirements of this Subchapter relating to underground mining activities, and Parts 817 and 828.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 785.22, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-785.25. Lands eligible for re-mining.

(a) This section contains permitting requirements to implement 4VAC25-130-773.15(b)(4). Any person who submits a permit application to conduct a surface coal mining operation on lands eligible for re-mining must comply with this section.

(b) Any application for a permit under this section shall be made according to all requirements of this subchapter applicable to surface coal mining and reclamation operations. In addition, the application shall:

- (1) To the extent not otherwise addressed in the permit application, identify potential environmental and safety problems related to prior mining activity at the site and that could be reasonably anticipated to occur. This identification shall be based on a due diligence investigation which shall include visual observations at the site, a record review of past mining at the site, and environmental sampling tailored to current site conditions.
- (2) With regard to potential environmental and safety problems referred in to subdivision (b)(1) of this section, describe the mitigative measures that will be taken to ensure that the applicable reclamation requirements of this chapter can be met.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 14, Issue 5, eff. December 24, 1997; Errata, 14:10 VA.R. 1751 February 2, 1998; amended, Virginia Register Volume 23, Issue 16, eff. May 16, 2007.

Part 789

Procedures Applicable to Administrative Hearing

4VAC25-130-789.1. Petition for award of costs and expenses under Section 45.1-249E of the Act.

- (a) Any person may file a petition for award of costs and expenses including attorneys' fees reasonably incurred as a result of that person's participation in any administrative proceeding under the Act which results in--
- (1) A final order being issued by a Hearing Officer, or
 - (2) A final order being issued by the Director or division.
- (b) The petition for an award of costs and expenses including attorneys' fees must be filed with the Hearing Officer who issued the final order, or if the final order was issued by the Director or division, with the Director or division, within 30 days of receipt of such order. Failure to make a timely filing of the petition may constitute a waiver of the right to such an award.
- (c) A petition, filed under this section, shall include the name of the person from whom costs and expenses are sought and the following shall be submitted in support of the petition--
- (1) An affidavit setting forth in detail all costs and expenses including attorneys' fees reasonably incurred for, or in connection with, the person's participation in the proceeding;
 - (2) Receipts or other evidence of such costs and expenses; and
 - (3) Where attorneys' fees are claimed, evidence concerning the hours expended on the case, the customary commercial rate of payment for such services in the area, and the experience, reputation and ability of the individual or individuals performing the services. The person or agency to whom the petition is filed may consult with the division's legal counsel regarding claimed attorneys' fees.
- (d) Any person served with a copy of the petition shall have 30 days from service of the petition within which to file an answer to such petition.
- (e) Appropriate costs and expenses including attorneys' fees may be awarded--
- (1) To any person from the permittee, if the person initiates any administrative proceedings reviewing enforcement actions, upon a finding that a violation of the Act, regulations or permit has occurred, or that an imminent hazard existed, or to any person who participates in an enforcement proceeding where such a finding is made if the Hearing Officer or Director or division determines that the person made a substantial contribution to the full and fair determination of the issues;
 - (2) To a permittee or permit applicant from any person where the permittee or permit applicant demonstrates that the person initiated an administrative proceeding under the Act or participated in such a proceeding in bad faith for the purpose of harassing or embarrassing

the permittee or permit applicant.

(f) An award under these sections may include--

(1) All costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred as a result of initiation and/or participation in a proceeding under the Act; and

(2) All costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred in seeking the award.

(g) Any person aggrieved by a decision concerning the award of costs and expenses in an administrative proceeding under the Act may appeal such award to the division within 30 days, unless the Director or division has made the initial decision concerning such an award. Awards by the Director or division are final for the purposes of judicial review.

(h) For the purposes of this section, "person" shall include the Commonwealth, its agents, officers, or employees, and "permit applicant" shall include applicants for permit revisions, renewals, and transfer, assignment or sale of permit rights.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 789.1, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-789.2. Intervention.

(a) Any person may petition for leave to intervene at any stage of an administrative proceeding under the Act.

(b) A petitioner for leave to intervene shall incorporate in the petition a statement setting forth the interest of the petitioner and, where required, a showing of why his interest is or may be adversely affected.

(c) The Hearing Officer shall grant intervention where the petitioner--

(1) Had a statutory right to initiate the proceeding in which he wishes to intervene; or

(2) Has an interest which is or may be adversely affected by the outcome of the proceeding.

(d) If neither Paragraph (c)(1) nor (c)(2) of this section apply, the Hearing Officer shall consider the following in determining whether intervention is appropriate--

(1) The nature of the issues;

(2) The adequacy of representation of petitioner's interest which is provided by the existing parties to the proceeding;

(3) The ability of the petitioner to present relevant evidence and argument; and

(4) The effect of intervention on the division's implementation of its statutory mandate.

(e) Any person granted leave to intervene in a proceeding may participate in such proceeding as a full party or, if desired, in a capacity less than that of a full party. If an intervenor wishes to participate in a limited capacity, the extent and the terms of the participation shall be at the discretion of the Hearing Officer. Nothing herein shall be construed as requiring extension of the schedule of the proceeding as a result of intervention.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 789.2, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

Part 790

Initiation of Citizen Suits

4VAC25-130-790.1. Purpose.

Section 45.1-246.1 of the Act authorizes the commencement of civil actions by persons having an interest which is or may be adversely affected, in order to compel compliance with provisions of the Act. The purpose of this Part is to prescribe procedures governing the giving of notices required by Subsections (B) and (C) of section 45.1-246.1 as a prerequisite to the commencement of such actions.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 790.1, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-790.11. Service of notice.

(a) Notice to the Director. Service of notice given to the Director of an alleged violation or of an alleged failure of the Director to perform any act or duty under the Act which is not discretionary with the Director shall be accomplished by registered or certified mail addressed to the Director, Department of Mines, Minerals, and Energy, 202 North Ninth Street, 8th Floor, Richmond, Virginia 23219. A copy of such notice shall be mailed to the Director, Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, Virginia 24219.

(b) Notice to the Secretary of the Interior. Service of notice given to the Secretary of the Interior shall be accomplished by registered or certified mail addressed to the United States Secretary of the Interior, Office of the Secretary, Main Interior Building, Washington, D. C. 20240.

(c) Notice to alleged violator. Service of notice given to an alleged violator of the provisions of the Act or of any regulation in this chapter or of any permit or order issued pursuant thereto, shall be accomplished by registered or certified mail addressed to, or personal service upon, the

permittee or managing agent of the coal surface mining operation alleged to be in violation. Where the alleged violator is a corporation, a copy of the notice will be sent by certified or registered mail to the registered agent of such corporation. Where the alleged violator is a government instrumentality or agency, the notice shall be sent by certified or registered mail to the head of such government instrumentality or agency.

(d) Notice served in accordance with the provisions of this Part shall be deemed given on the postmark date, if served by mail, or on the date of receipt, if personally served.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 790.11, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-790.12. Contents of notice.

(a) Failure to act. Notice regarding a failure of the Director to perform an act or duty which is not discretionary shall contain the following:

- (1) A description of the person's interest which is or may be adversely affected;
- (2) The provisions of the Act which require such act or creates such duty;
- (3) A specific description of the action taken or not taken by the Director which is claimed to constitute a failure to perform such act or duty; and
- (4) The name and address of the person giving the notice.

(b) Violation of Act, rule, regulation, order or permit. Notices to the Director, the Secretary and alleged violators regarding an alleged violation of the Act, any regulation of this chapter, or of any permit or order issued pursuant thereto, shall contain sufficient information to enable the recipient to--

- (1) Identify the specific provision of the Act, the regulation, order or permit condition which allegedly has been violated;
- (2) The activity alleged to be in violation;
- (3) The person or persons responsible for the alleged violation;
- (4) The location of the alleged violation; and
- (5) The date or dates of such violation.

(c) The notice shall also describe the interest, which is or may be adversely affected, and shall provide the name and address of the person alleging such a violation.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 790.12, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

Part 795

Small Operator Assistance Program

4VAC25-130-795.1. Scope and purpose.

This Part comprises the Small Operator Assistance Program (SOAP) and establishes the procedures for providing assistance to eligible operators by the division. It is an elective means for the division to satisfy the requirements of § 45.1-235 C of the Act. The purpose of the program is to provide for eligible operators a determination of probable hydrologic consequences and a statement of results of test borings or core samplings which are required components of the permit application under Subchapter VG.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 795.1, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 16, Issue 15, eff. May 10, 2000.

4VAC25-130-795.6. Eligibility for assistance.

(a) An applicant is eligible for assistance if the applicant—

(1) Intends to apply for a permit pursuant to the Act;

(2) Establishes that his probable total attributed annual production from all locations on which the operator is issued the surface coal mining permit will not exceed 300,000 tons. Production from the following operations shall be attributed to the applicant—

(i) The pro rata share, based upon percentage of ownership of applicant, of coal produced by operations in which the applicant owns more than a 10% interest;

(ii) The pro rata share, based upon percentage of ownership of applicant, of coal produced in other operations by persons who own more than 10% of the applicant's operation;

(iii) All coal produced by operations owned by persons who directly or indirectly control the applicant by reason of direction of the management;

(iv) All coal produced by operations owned by members of the applicant's family and the applicant's relatives, unless it is established that there is no direct or indirect business

relationship between or among them;

(3) Is not restricted in any manner from receiving a permit under the Act; and

(4) Does not organize or reorganize his company solely for the purpose of obtaining assistance under the SOAP.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 795.6, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 16, Issue 15, eff. May 10, 2000.

4VAC25-130-795.7. Filing for assistance.

Each application for assistance shall include the following information:

(a) A statement of applicant's intent to file a permit application.

(b) The names and addresses of—

(1) The permit applicant; and

(2) The operator if different from the applicant.

(c) A schedule of the estimated total production of coal from the proposed permit area and all other locations from which production is attributed to the applicant under 4VAC25-130-795.6. The schedule shall include for each location—

(1) The operator or company name under which coal is or will be mined;

(2) The DMLR permit number, division of Mines license number and Mine Safety and Health Administration (MSHA) number, if issued;

(3) The actual coal production during the year preceding the year for which the applicant applies for assistance and production that may be attributed to the applicant under 4VAC25-130-795.6; and

(4) The estimated coal production and any production which may be attributed to the applicant for each year of the proposed permit.

(d) A description of—

(1) The proposed mining method;

(2) The anticipated starting and termination dates of mining operations;

(3) The number of acres of land to be affected by the proposed mining operation; and

(4) A general statement on the probable depth and thickness of the coal resource including a statement of reserves in the permit area, or in the case of underground mines the affected area, and the method by which they were calculated.

(e) A U.S. Geological Survey topographic map at a scale of 1:24,000 or larger or other topographic map of equivalent detail for the assistance area which clearly shows—

- (1) The area of land to be affected and the natural drainage watershed above and below the affected area;
- (2) The location of any existing or proposed test borings; and
- (3) The location and extent of known workings of any underground mines.

(f) Copies of documents which show that—

- (1) The applicant has a legal right to enter and commence mining within the proposed permit area; and
- (2) A legal right of entry has been obtained for the division and laboratory personnel to inspect the lands to be mined and adjacent areas to collect environmental data or to install necessary instruments.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 795.7, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 16, Issue 15, eff. May 10, 2000.

4VAC25-130-795.8. Application approval and notice.

(a) If the division finds the applicant eligible, the division shall inform the applicant in writing that the application is approved.

(b) If the division finds the applicant ineligible, the division shall inform the applicant in writing that the application is denied and shall state the reasons for denial.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 795.8, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 16, Issue 15, eff. May 10, 2000.

4VAC25-130-795.9. Program services and data requirements.

- (a) To the extent possible with available funds, the division shall select and pay a qualified laboratory to make the determination and statement and provide other services referenced in paragraph (b) of this section for eligible applicants who request assistance.
- (b) The division shall determine the data needed for each applicant or group of applicants. Data collected and the results provided to the division shall be sufficient to satisfy the requirements for:
- (1) The determination of the probable hydrologic consequences of the surface mining and reclamation operations in the proposed permit area and adjacent areas, including the engineering analysis and the designs necessary for the determination in accordance with 4VAC25-130-780.21(f), 4VAC25-130-784.14 (e) and any other applicable provisions of this chapter;
 - (2) The drilling and statement of the results of test borings or core samplings for the proposed permit area in accordance with 4VAC25-130-780.22(b) and 4VAC25-130-784.22(b) and any other applicable provisions of this chapter;
 - (3) The development of cross-section maps and plans required by 4VAC25-130-779.25 and 4VAC25-130-783.25;
 - (4) The collection of archeological and historic information and related plans required by 4VAC25-130.779.12 (b), 4VAC25-130-783.12 (b), 4VAC25-130-780.31, 4VAC25-130-784.17, and any other archeological and historic information required by the division;
 - (5) Pre-blast surveys required by 4VAC25-130-780.13; and
 - (6) The collection of site specific resources information, the production of protection and enhancement plans for fish and wildlife habitats required by 4VAC25-130-780.16 and 4VAC25-130-784.21, and information and plans for any other environmental values required by the division under the Act.
- (c) Data collection and analysis may proceed concurrently with the development of mining and reclamation plans by the applicant.
- (d) Data collected under this program shall be made publicly available in accordance with 4VAC25-130-773.13(d). The division shall develop procedures for interstate coordination and exchange of data.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 795.9, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 16, Issue 15, eff. May 10, 2000.

4VAC25-130-795.10. Qualified laboratories.

(a) Basic qualifications. To be designated a qualified laboratory under the Virginia Small Operator Assistance Program, a firm shall demonstrate that it—

- (1) Is staffed with experienced, professional or technical personnel in the fields applicable to the work to be performed;
- (2) Has adequate space for material preparation and cleaning and sterilizing equipment and has stationary equipment, storage, and space to accommodate workloads during peak periods;
- (3) Meets applicable federal or state safety and health requirements;
- (4) Has analytical, monitoring and measuring equipment capable of meeting applicable standards;
- (5) Has the capability of collecting necessary field samples and making hydrologic field measurements and analytical laboratory determinations by acceptable hydrologic, geologic, or analytical methods in accordance with the requirements of 4VAC25-130-780.21, 4VAC25-130-780.22, 4VAC25-130-784.14 and 4VAC25-130-784.22 and any other applicable provisions of this chapter (other appropriate methods or guidelines for data acquisition may be approved by the division); and
- (6) Has the capability of performing services for either the determination or statement referenced in 4VAC25-130-795.9(b).

(b) Subcontractors. Subcontractors may be used to provide some of the required services provided their use is identified at the time a determination is made that a firm is qualified and they meet requirements specified by the division.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 795.10, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 16, Issue 15, eff. May 10, 2000.

4VAC25-130-795.11. Assistance funding.

(a) Use of funds. Funds specifically authorized for this program shall be used to provide the services specified in 4VAC25-130-795.9 and shall not be used to cover administrative expenses.

(b) Allocation of funds. The division shall establish a formula for allocating funds to provide services for eligible small operators if available funds are less than those required to provide the services pursuant to this Part.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 795.11, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 16, Issue 15, eff. May 10, 2000.

4VAC25-130-795.12. Applicant liability.

(a) The coal operator who has received assistance pursuant to 4VAC25-130-795.9 shall reimburse the division for the cost of the services rendered if:

- (1) The applicant submits false information, fails to submit a permit application within one year from the date of receipt of the approved laboratory report, or fails to mine after obtaining a permit;
- (2) The division finds that the operator's actual and attributed annual production of coal for all locations exceeds 300,000 tons during the 12 months immediately following the date on which the operator is issued the surface coal mining and reclamation permit; or
- (3) The mining rights granted under the permit are sold, transferred, or assigned to another person and the transferee's total actual and attributed production exceeds the 300,000-ton annual production limit during the 12 months immediately following the date on which the permit was originally issued. Under this paragraph the applicant and its successor are jointly and severally obligated to reimburse the division.

(b) The division may waive the reimbursement obligation if it finds that the applicant at all times acted in good faith.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 795.12, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 16, Issue 15, eff. May 10, 2000.

Part 800

Requirements for Bonding of Surface Coal Mining and Reclamation Operations

4VAC25-130-800.11. Requirement to file a bond.

(a) After a permit application under Subchapter VG has been approved, but before the permit is issued, the applicant shall file with the division, on a form prescribed and furnished by the division, a bond or bonds for performance made payable to the division and conditioned upon the faithful performance of all the requirements of the Act, the permit, and the reclamation plan, in

accordance with Parts 800 or 801.

(b)(1) The bond or bonds shall cover the entire permit area, or for operations bonded under Part 801, an identified increment of land within the permit area upon which the permittee will initiate and conduct surface coal mining and reclamation operations during the initial term of the permit.

(2) For operations bonded under Part 801-

(A) As surface coal mining and reclamation operations on succeeding increments are initiated and conducted within the permit area, the permittee shall file with the division an additional bond or bonds to cover such increments in accordance with this section.

(B) The permittee shall identify the initial and successive areas or increments for bonding on the permit application map submitted for approval as provided in the application (under Parts 780 and 784), and shall specify the bond amount to be provided for each area or increment.

(C) Independent increments shall be of sufficient size and configuration to provide for efficient reclamation operations should reclamation by the division become necessary pursuant to 4VAC25-130-800.50.

(c) A permittee shall not disturb any surface areas, succeeding increments, or extend any underground shafts, tunnels or operations prior to acceptance by the division of the required performance bond.

(d) The applicant shall file, for approval by the division, a bond or bonds under one of the following schemes for the permit area as determined in accordance with 4VAC25-130-800.14 or Part 801:

(1) The entire performance bond required by 4VAC25-130-801.13;

(2) A performance bond or bonds for the entire permit area;

(3) A cumulative bond schedule and the performance bond required for full reclamation of the initial area to be disturbed; or

(4) For operations bonded under Part 801, an incremental bond schedule and the performance bond required for the first increment in the schedule.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 800.11, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-800.12. Form of the performance bond.

The division shall prescribe the form of the performance bond and may allow:

- (a) A surety bond;
- (b) A collateral bond;
- (c) An escrow account; or
- (d) A combined surety/escrow account;
- (e) A combination of any of the bonding methods listed in (a) through (d); or
- (f) A self bond in accordance with 4VAC25-130-801.13.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 800.12, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-800.13. Period of liability.

- (a) Performance bond liability shall be for the duration of the surface coal mining and reclamation operation and for a period which is coincident with the permittee's period of extended responsibility for successful revegetation provided in 4VAC25-130-816.116 or 4VAC25-130-817.116 or until achievement of the reclamation requirements of the Act, and the permit, whichever is later.
- (b) Isolated and clearly defined portions of the permit area requiring extended liability may be separated from the original area and bonded separately with the approval of the division. Such areas shall be limited in extent and shall not constitute a scattered, intermittent, or checkerboard pattern of failure. Access to the separated areas for remedial work may be included in the area under extended liability if deemed necessary by the division.
- (c) If the division approves a long-term, intensive agricultural postmining land use, in accordance with 4VAC25-130-816.133 or 4VAC25-130-817.133, the 5 year period of liability shall commence at the date of initial planting for such long-term agricultural use.
- (d)(1) The bond liability of the permittee shall include only those actions which he is obligated to take under the permit, including completion of the reclamation plan, so that the land will be capable of supporting the postmining land use approved under 4VAC25-130-816.133 or 4VAC25-130-817.133.
 - (2) Implementation of an alternative postmining land use approved under 4VAC25-130-816.133(c) or 4VAC25-130-817.133(c) which is beyond the control of the permittee, need not be covered by the bond. Bond liability for prime farmland shall be as specified in 4VAC25-130-800.40(c)(2).

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 800.13, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-800.14. Determination of bond amount.

(a) The amount of the bond required for each bonded area shall:

- (1) Be determined by the division;
- (2) Depend upon the requirements of the approved permit and reclamation plan;
- (3) Reflect the probable difficulty of reclamation, giving consideration to such factors as topography, geology, hydrology, and revegetation potential; and
- (4) Be based on, but not limited to, the estimated cost of reclamation submitted by the permit applicant.

(b) The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work has to be performed by the division in the event of forfeiture, and in no case shall the total bond initially posted for the entire area under one permit be less than \$10,000.

(c) A permittee's financial responsibility under 4VAC25-130-817.121(c) for repairing material damage resulting from subsidence may be satisfied by the liability insurance policy required under 4VAC25-130-800.60.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 800.14, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-800.15. Adjustment of amount.

(a) The amount of the bond or deposit required and the terms of the acceptance of the applicant's bond shall be adjusted by the division from time to time as the area requiring bond coverage is increased or decreased or where the cost of future reclamation changes. The division may specify periodic times or set a schedule for reevaluating and adjusting the bond amount to fulfill this requirement.

(b) The division shall:

- (1) Notify the permittee, the surety, and any person with a property interest in collateral who has requested notification under 4VAC25-130-800.21(c) of any proposed adjustment to the bond amount; and
- (2) Provide the permittee an opportunity for an informal conference on the adjustment.

(c) A permittee may request reduction of the amount of the performance bond upon submission of evidence to the division proving that the permittee's method of operation or other circumstances reduces the estimated cost for the division to reclaim the bonded area. Bond adjustments which involve undisturbed land or revision of the cost estimate of reclamation are not considered bond release subject to procedures of 4VAC25-130-800.40.

(d) In the event that an approved permit is revised in accordance with Subchapter VG, the division shall review the bond for adequacy and, if necessary, shall require adjustment of the bond to conform to the permit as revised.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 800.15, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-800.16. General terms and conditions of bond.

(a) The performance bond shall be in an amount determined by the division as provided in 4VAC25-130-800.14 or Part 801.

(b) The performance bond shall be payable to the Commonwealth of Virginia, Director-Division of Mined Land Reclamation.

(c) The performance bond shall be conditioned upon faithful performance of all the requirements of the Act, this chapter, and the approved permit, including completion of the reclamation plan.

(d) The duration of the bond shall be for the time period provided in 4VAC25-130-800.13.

(e)(1) The bond shall provide a mechanism for a bank or surety company to give prompt notice to the division and the permittee of any action filed alleging the insolvency or bankruptcy of the surety company, the bank, or the permittee, or alleging any violations which would result in suspension or revocation of the surety or bank charter or license to do business.

(2) Upon the incapacity of a bank or surety company by reason of bankruptcy, insolvency, or suspension or revocation of a charter or license, the permittee shall be deemed to be without bond coverage and shall promptly notify the division. The division, upon notification received through procedures of Paragraph (e)(1) of this section or from the permittee, shall, in writing, notify the permittee who is without bond coverage and specify a reasonable period, not to exceed 90 days, to replace bond coverage. If an adequate bond is not posted by the end of the period allowed, the permittee shall cease coal extraction and shall comply with the provisions of 4VAC25-130-816.132 or 4VAC25-130-817.132 and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Mining operations shall not resume until the division has determined that an acceptable bond has been posted.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 800.16, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-800.17. Bonding requirements for underground coal mines and long-term coal-related surface facilities and structures.

(a) Responsibilities. The division shall require bond coverage, in an amount determined under 4VAC25-130-800.14 or Part 801, for long-term surface facilities and structures, and for areas disturbed by surface impacts incident to underground mines, for which a permit is required. Specific reclamation techniques required for underground mines and long-term facilities shall be considered in determining the amount of bond to complete the reclamation. Facilities for which bond is furnished in accordance with Part 801 are excluded from this section, except as provided in 4VAC25-130-801.12(e).

(b) Long-term period of liability.

(1) The period of liability for every bond covering long-term surface disturbances shall commence with the issuance of the permit, except that to the extent that such disturbances will occur on a succeeding increment to be bonded, such liability will commence upon the posting of the bond for that increment before the initial surface disturbance of that increment. The liability period shall extend until all reclamation, restoration, and abatement work under the permit has been completed and the bond is released under the provisions of 4VAC25-130-800.40, or until the bond has been replaced or extended in accordance with 4VAC25-130-800.17(b)(3).

(2) Long-term surface disturbances shall include long-term coal-related surface facilities and structures, and surface impacts incident to underground coal mining, which disturb an area for a period that exceeds five years. Long-term surface disturbances include, but are not limited to: surface features of shafts and slope facilities, coal refuse areas, powerlines, boreholes, ventilation shafts, preparation plants, machine shops, roads, and loading and treatment facilities.

(3) To achieve continuous bond coverage for long-term surface disturbances, the bond shall be conditioned upon extension, replacement, or payment in full, 30 days prior to the expiration of the bond term.

(4) Continuous bond coverage shall apply throughout the period of extended responsibility for successful revegetation and until the provisions of 4VAC25-130-800.40 have been met.

(c) Bond forfeiture. The division shall take action to forfeit a bond pursuant to this section, if 30 days prior to bond expiration, the permittee has not filed: (1) a performance bond for a new term as required for continuous coverage, or (2) a performance bond providing coverage for the period of liability, including the period of extended responsibility for successful revegetation.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 800.17, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-800.20. Surety bonds.

(a) A surety bond shall be executed by the permittee and a corporate surety licensed to do business in the Commonwealth.

(b) Surety bonds shall be noncancellable during their terms, except that surety bond coverage for lands not disturbed may be cancelled with the prior consent of the division. The division shall advise the surety, within 30 days after receipt of a notice to cancel bond, whether the bond may be cancelled on an undisturbed area.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 800.20, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-800.21. Collateral bonds.

(a) Collateral bonds, except for letters of credit, shall be subject to the following conditions: The division shall—

(1) Keep custody of collateral deposited by the applicant until authorized for release or replacement as provided in this Subchapter.

(2) Value collateral at its current market value, not at face value.

(3) Require that certificates of deposit be made payable to or assigned to the Commonwealth of Virginia, Director-Division of Mined Land Reclamation, both in writing and upon the records of the bank issuing the certificates. The division shall require the banks issuing these certificates to waive all rights of setoff or liens against those certificates and that such certificates be automatically renewable.

(4) Not accept an individual certificate of deposit in an amount in excess of \$100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(5) Require the applicant to deposit the certificates of deposit in a sufficient amount to assure

that the division will be able to liquidate the certificates prior to maturity, upon forfeiture, for the amount of the bond required by this Subchapter.

(6) Require the applicant to designate, with the bond submitted, the person to whom—

(i) The collateral will be endorsed and returned upon release or replacement as provided in this Subchapter; and

(ii) Any interest or dividends paid on the collateral shall be paid.

(b) Cash accounts shall be subject to the following conditions:

(1) The division may authorize the permittee to supplement the bond through the establishment of a cash account in one or more federally- insured or equivalently protected accounts made payable upon demand to the division. The total bond including the cash account shall not be less than the amount required under terms of performance bonds including any adjustments, less amounts released in accordance with 4VAC25-130-800.40 or 4VAC25-130-801.18.

(2) Any interest paid on a cash account shall be paid to the permittee.

(3) Certificates of deposit may be substituted for a cash account with the approval of the division.

(4) The division shall not accept an individual cash account in an amount in excess of \$100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(c) Letters of credit shall be subject to the following conditions:

(1) The letter may be issued only by a bank organized or authorized to do business in the United States and must conform to the Uniform Customs and Practice for Documentary Credits (1993 Revision) International Chamber of Commerce (Publication No. 500);

(2) Letters of credit shall be irrevocable during their terms. A letter of credit used as security in areas requiring continuous bond coverage shall be forfeited and shall be collected by the division if not replaced by other suitable bond or letter of credit at least 30 days before its expiration date; and

(3) The letter of credit shall be payable to the department at sight, in part or in full, upon receipt from the division of a notice of forfeiture issued in accordance with 4VAC25-130-800.50.

(d) Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing to the division at the time collateral is offered.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 800.21, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 20, Issue 10, eff. February 25, 2004.

4VAC25-130-800.23. Escrow bonding.

- (a) The division may authorize the permittee to supplement a bonding program through the establishment of an escrow account deposited in one or more federally insured accounts payable on demand only to the division or deposited with the division directly. Contributions to the account may be based on acres affected or tons of coal produced or any other rate approved by the division. In all cases, the total bond including any escrow amount, as determined by the division in the bonding schedule, shall not be less than the amount required under 4VAC25-130-800.14 or Part 801, including any adjustments, less amounts released under 4VAC25-130-800.40 or Part 801.
- (b) Escrow funds deposited in federally insured accounts shall not exceed the maximum insured amount under applicable Federal insurance programs such as by FDIC or FSLIC.
- (c) Interest paid on escrow accounts shall be retained in the escrow account and applied to the bond value of the escrow account unless the division has approved that the interest be paid to the permittee. In order to qualify for interest payment, the permittee shall request such action in writing during the permit application process under 4VAC25-130-800.11.
- (d) Certificates of deposit may be substituted for escrow accounts upon approval of the division. Provisions of 4VAC25-130-800.21 shall apply to certificates of deposit as collateral bond.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 800.23, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-800.24. Combined surety/escrow bonding.

- (a) The division may accept a combined surety/escrow bonding schedule provided that:
 - (1) A surety bond payable to the division is posted in the amount determined under 4VAC25-130-800.14 or 4VAC25-130-801.12 for reclamation of each successive increment, and
 - (2) An interest-bearing escrow account payable to the division with a predetermined deposit amount and frequency is established.
- (b) Conditions of the combined surety/escrow bonding method shall be as follows:
 - (1) Surety bond.

- (i) The term of the surety bond shall be not less than two years.
- (ii) The amount of the surety bond shall always be sufficient to cover the difference between the escrow balance and the total reclamation cost.
- (iii) The surety bond may be reduced in amount, but the liability remaining shall depend on the escrow-deposit rate which shall be subject to provisions of 4VAC25-130-800.15 and 4VAC25-130-800.30.
- (iv) The surety bond shall be noncancellable by the surety during the bond term.
- (v) Surety bond coverage may be released by the division without applying the bond-release criteria of 4VAC25-130-800.40 at any time during the bond term, provided provisions of Paragraph (b)(2)(vi) of this section are met or are in accordance with the provisions of bond replacement under 4VAC25-130-800.30.
- (vi) The surety bond is subject to the conditions of bond forfeiture of 4VAC25-130-800.50, including noncompliance with the escrow account provisions of Paragraph (b)(2) of this section.

(2) Escrow account.

- (i) The terms and conditions of the escrow account shall be developed jointly by the permittee, surety, and the division. For the purposes of this section, the development of the escrow account shall be based on a production basis in an amount not less than that required to make the escrow account equal to or greater than the bond requirement within the term of the surety bond as agreed on jointly by the permittee, the surety, and the division. Deposits to the escrow account by the permittee shall be made monthly and so reported to the division. Failure to make deposits on schedule shall be just cause for action by the division.
- (ii) A certified escrow account balance statement shall be provided quarterly to the surety and the division.
- (iii) Provisions of the escrow account shall be in accordance with 4VAC25-130-800.23.
- (iv) The deposit amount shall be adjusted to provide for changing reclamation costs in accordance with 4VAC25-130-800.15. However, when the escrow account equals or exceeds the total bonding amount, the monthly payment of the permittee shall continue, at the option of the division, in an amount necessary to provide for any foreseeable adjustments.
- (v) The escrow account shall be subject to the bond forfeiture conditions of 4VAC25-130-800.50.
- (vi) The escrow account balance shall equal the initial bond amount, plus any adjustments required by Paragraph (b)(2)(i), 120 days prior to surety bond termination, unless the total amount required has been previously reduced through the bond release procedures of

4VAC25-130-800.40.

(vii) Release of liability under the escrow account shall be subject to the provisions of 4VAC25-130-800.40.

(c) Provisions of 4VAC25-130-800.40 may be applied to both surety and escrow bond coverage during the bond term.

(d) The surety/escrow combination may be repeated successively or amended during the term by replacing the escrow account with a surety bond, and reestablishing the escrow terms and deposit rate, subject to division approval.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 800.24, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-800.30. Replacement of bonds.

(a) The division may allow a permittee to replace existing bonds with other bonds that provide equivalent coverage.

(b) The division shall not release existing performance bonds until the permittee has submitted, and the division has approved, acceptable replacement performance bonds. Replacement of a performance bond pursuant to this section shall not constitute a release of bond under 4VAC25-130-800.40.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 800.30, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-800.40. Requirements to release performance bonds.

(a) Bond release application.

(1) The permittee may file an application with the division for the release of all or part of a performance bond. Applications may be filed only at times or during seasons authorized by the division in order to properly evaluate the completed reclamation operations. The times or seasons appropriate for the evaluation of certain types of reclamation shall be identified in the mining and reclamation plan required in Subchapter VG.

(2) Within 30 days after an application for bond release has been filed with the division, the permittee shall submit proof of publication of the advertisement placed at least once a week for four successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. The advertisement shall be considered part of any bond release application and shall contain the applicant's name, the permit number, notification of the precise location of the land affected, the number of acres, the type and amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, a description of the results achieved as they relate to the permittee's approved reclamation plan, and the name and address of the division to which written comments, objections, or requests for public hearings and informal conferences on the specific bond release may be submitted pursuant to 4VAC25-130-800.40(f) and (h). In addition, as part of any bond release application, the permittee shall submit copies of letters which he has sent to adjoining property owners, local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the surface coal mining and reclamation operation took place, notifying them of the intention to seek release from the bond.

(3) The permittee shall include in the application for bond release a notarized statement which certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of the Act, the regulatory program, and the approved reclamation plan. Such certification shall be submitted for each application or phase of bond release.

(b) Inspection by the division.

(1) Upon receipt of the bond release application, the division shall, within 30 days, or as soon thereafter as weather conditions permit, conduct an inspection and evaluation of the reclamation work involved. The evaluation shall consider, among other factors, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of future occurrence of such pollution, and the estimated cost of abating such pollution. The surface owner, agent, or lessee shall be given notice of such inspection and may participate with the division in making the bond release inspection. The division may arrange with the permittee to allow access to the permit area, upon request by any person with an interest in the bond release, for the purpose of gathering information relevant to the proceeding.

(2) Within 60 days from the filing of the bond release application, if no public hearing is held pursuant to paragraph (f) of this section, or, within 30 days after a public hearing has been held pursuant to paragraph (f) of this section, the division shall notify in writing the permittee, the surety or other persons with an interest in the bond collateral who have requested notification under 4VAC25-130-800.21(c), and the persons who either filed objections in writing or objectors who were a party to the hearing proceedings, if any, of its decision to release or not to release all or part of the performance bond.

(c) The division may release all or part of the bond for the entire permit area or a portion of the permit area if the division is satisfied that all reclamation or a phase of the reclamation covered by the bond or portion thereof has been accomplished in accordance with the following schedules for reclamation of Phases I, II and III:

(1) At the completion of Phase I, after the permittee completes the backfilling, regrading (which may include the replacement of topsoil) and drainage control of a bonded area in accordance with the approved reclamation plan, 60% of the bond or collateral for the applicable area.

(2) At the completion of Phase II, after revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan, an additional amount of bond. When determining the amount of bond to be released after successful revegetation has been established, the division shall retain that amount of bond for the revegetated area which would be sufficient to cover the cost of reestablishing revegetation if completed by a third party and for the period specified for permittee responsibility in § 45.1-241 of the Act for reestablishing revegetation. No part of the bond or deposit shall be released under this paragraph so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by § 45.1-242 of the Act and by Subchapter VK or until soil productivity for prime farmlands has returned to the equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to § 45.1-238(D) of the Act and Part 823. Where a silt dam is to be retained as a permanent impoundment pursuant to Subchapter VK, the Phase II portion of the bond may be released under this paragraph so long as provisions for sound future maintenance by the permittee or the landowner have been made with the division.

(3) At the completion of Phase III, after the permittee has successfully completed all surface coal mining and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the period specified for permittee responsibility in 4VAC25-130-816.116 or 4VAC25-130-817.116. However, no bond shall be fully released under provisions of this section until reclamation requirements of the Act and the permit are fully met.

(d) If the division disapproves the application for release of the bond or portion thereof, the division shall notify the permittee, the surety, and any person with an interest in collateral as provided for in 4VAC25-130-800.21(c), in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and allowing an opportunity for a public hearing.

(e) When any application for total or partial bond release is filed with the division, the division shall notify the town, city or other municipality nearest the operation and the county in which the surface coal mining operation is located by certified mail at least 30 days prior to the release of all or a portion of the bond.

(f) Any person with a valid legal interest which might be adversely affected by release of the bond, or the responsible officer or head of any federal, state, or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or

economic impact involved in the operation or which is authorized to develop and enforce environmental standards with respect to such operations, shall have the right to file written objections to the proposed release from bond with the division within 30 days after the last publication of the notice required by 4VAC25-130-800.40(a)(2). If written objections are filed and a hearing is requested, the division shall inform all the interested parties of the time and place of the hearing, and shall hold a public hearing within 30 days after receipt of the request for the hearing. The date, time and location of the public hearing shall be advertised by the division in a newspaper of general circulation in the locality for two consecutive weeks. The public hearing shall be held in the locality of the surface coal mining operation from which bond release is sought, at the location of the division office, or at the State Capital, at the option of the objector. The decision of the Hearing Officer shall be made within 30 days from the close of the hearing.

(g) For the purpose of the hearing under paragraph (f) of this section, the division shall have the authority to administer oaths, subpoena witnesses or written or printed material, compel the attendance of witnesses or the production of materials, and take evidence including, but not limited to, inspection of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing shall be made, and a transcript shall be made available on the motion of any party or by order of the division.

(h) Without prejudice to the right of an objector or the applicant, the division may hold an informal conference as provided in § 45.1-239 of the Act to resolve such written objections. The division shall make a record of the informal conference unless waived by all parties, which shall be accessible to all parties. The division shall also furnish all parties of the informal conference with a written finding of the division based on the informal conference, and the reasons for said finding.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 800.40, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 15, Issue 6, eff. January 6, 1999.

4VAC25-130-800.50. Forfeiture of bonds.

(a) If the permittee refuses or is unable to conduct reclamation of an unabated violation, fails to comply with the terms of the permit, or defaults on the conditions under which the bond was accepted, the division shall take the following action to forfeit all or part of a bond or bonds for the permit area or a portion of the permit area:

(1) Send written notification by certified mail, return receipt requested, to the permittee and the surety on the bond, if any, informing them of the determination to forfeit all or part of the bond, including the reasons for the forfeiture and the amount to be forfeited. The amount shall be based on the estimated total cost of achieving the reclamation plan requirements.

(2) Advise the permittee and surety, if applicable, of the conditions under which forfeiture may be avoided. Such conditions may include, but are not limited to--

(i) Agreement by the permittee or another party to perform reclamation operations in accordance with a compliance schedule acceptable to the division, which meets the conditions of the permit, the reclamation plan, and demonstrates that such party has the ability to satisfy the conditions; or

(ii) The division may allow a surety to complete the reclamation plan if the surety can demonstrate an ability to complete the reclamation in accordance with the approved reclamation plan. Except where the division may approve partial release authorized under 4VAC25-130-800.40, no surety liability shall be released until successful completion of all reclamation under the terms of the permit, including applicable liability periods of 4VAC25-130-800.13.

(b) In the event forfeiture of the bond is required by this section, the division shall:

(1) Proceed to collect the forfeited amount as provided by Virginia law for the collection of defaulted bonds or other debts if actions to avoid forfeiture have not been taken, or if rights of appeal, if any, have not been exercised within a time established by the division, or if such appeal, if taken, is unsuccessful.

(2) Use funds collected from bond forfeiture to complete the reclamation plan on the permit area.

(c) Upon default, the division may cause the forfeiture of any and all bonds deposited to complete reclamation for which the bonds were posted. Unless specifically limited, as provided in 4VAC25-130-800.11(b)(3), bond liability shall extend to the entire permit area under conditions of forfeiture.

(d)(1) In the event the estimated amount forfeited is insufficient to pay for the full cost of reclamation, the permittee shall be liable for the remaining costs. The division may complete, or authorize completion of, reclamation of the bonded area and may recover from the permittee all costs of reclamation in excess of the amount forfeited.

(2) In the event the amount of performance bond forfeited was more than the amount necessary to complete reclamation, the unused funds shall be returned by the division to the party from whom they were collected.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 800.50, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-800.51. Administrative review of performance bond forfeiture.

(a) The permittee or surety, if applicable, may request, in writing, a hearing on the division's

determination to forfeit the performance bond within 30 days of receipt of the written determination from the division.

(b) A request for hearing shall not operate as a stay of the bond forfeiture decision. Unless the division decides to withhold forfeiture as provided by 4VAC25-130-800.50 (a) (2), it shall take immediate steps to collect the necessary performance bond amounts so that it, or its contractor, may complete the reclamation plan and any other regulatory requirements in the most expeditious manner possible, pending administrative and/or judicial review.

(c)(1) The division shall commence the hearing within 30 days of the hearing request. The hearing shall be conducted in accordance with § 2.2-4020 of the Code of Virginia by a Hearings Officer appointed by the director.

(2) The burden of proof at such hearing shall be on the party seeking to reverse the decision of the division.

(3) For the purpose of such hearing, the hearings officer may administer oaths and affirmations, subpoena witnesses, written or printed materials, compel attendance of witnesses or production of those materials, compel discovery, and take evidence, including but not limited to site inspections of the land affected.

(4) The hearings officer shall cause an accurate verbatim record of the hearing to be made. The division may charge the reasonable cost of preparing such record to any party who requests a copy of the record.

(5) Ex parte contacts between representatives of the parties to the hearing and the hearings officer shall be prohibited.

(6) Within 30 days after the close of the record, the division shall issue and furnish the permittee, surety (if applicable) and each person who participated in the hearing with the written findings of fact, conclusion of law, and order of the hearings officer with respect to the appeal. The decision of the hearings officer shall be final as of the date of issuance, subject to the review and reconsideration by the director or his designee, provided in subsection (d) of this section.

(d) Within 14 days after the issuance of the hearings officer's decision under subdivision (c) (6) of this section, the permittee, surety (if applicable), or any person who participated in the hearing and has an interest which is or may be adversely affected by the decision, may appeal to the director or his designee for review of the record and reconsideration of the hearings officer's decision. The director or his designee may also on his own motion, with notice to the parties, review the record and reconsider the hearings officer's decision within the same time period. No further evidence will be allowed in connection with such review and reconsideration, but the director or his designee may hear further arguments and may, after considering the record, remand the case for further hearing if he considers such action necessary to develop the facts. Within 30 days of the appeal or motion for review and reconsideration, the director or his designee shall complete his review of the hearings officer's decision and issue a final decision.

(e) All requests for hearing, or appeals for review and reconsideration made under this section; and all notices of appeal for judicial review of a hearing officer's final decision, or the final decision on review and reconsideration shall be filed with the Director, Division of Mined Land

Reclamation, Department of Mines, Minerals and Energy, Post Office Drawer 900, Big Stone Gap, Virginia 24219.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 800.51, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 23, Issue 13, eff. April 4, 2007.

4VAC25-130-800.52. Bond forfeiture reinstatement procedures.

(a) Any person who owns or controls or has owned or controlled any operation on which the bond has been forfeited or the permit revoked pursuant to this chapter or pursuant to Chapters 15 [repealed], 17 (§ 45.1-198 et seq.) or 23 [repealed] of Title 45.1 of the Code of Virginia and who has not previously been reinstated by the director may petition the director for reinstatement. Reinstatement, if granted, shall be under such terms and conditions as set forth by the director or his designee. The director or his designee in determining the terms and conditions shall consider the particular facts and circumstances existing in each individual case. Reinstatement shall not be available to applicants for reinstatement where the division finds that the applicant controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of the Act of such nature and duration and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the Act, in accordance with 4VAC25-130-773.15(b)(3). As a minimum, the applicant for reinstatement shall satisfy the following requirements:

- (1) Abatement of any outstanding violations existing on each site on which the bond has been forfeited or the permit revoked;
- (2) Payment of any outstanding civil penalties (both state and federal), Reclamation fund taxes, and any outstanding fees, including Federal Abandoned Mine Land Reclamation taxes;
- (3) Reclaim each site on which the bond was forfeited according to the applicable law, regulations and standards governing the site at the time of bond forfeiture;
- (4) Payment to the director of any money expended by the Commonwealth in excess of the forfeited bond amount to accomplish the reclamation of the sites; and
- (5) Pay to the director a reinstatement fee of \$5,000 assessed by the director on each site forfeited. These fees shall be used by the director to accomplish reclamation on other forfeited or abandoned surface coal mining operations.

(b) Reinstatement by the director shall be a prerequisite to the filing by the person (applicant for reinstatement) of any new permit application or renewal under this chapter or Chapters 15 [repealed], 17 (§ 45.1-198 et seq.), or 23 [repealed] of Title 45.1 of the Code of Virginia, but shall not affect the person's need to comply with all other requirements of said statutes, regulations or both promulgated thereunder.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 800.52, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Volume 29, Issue 13, eff. March 27, 2013.

4VAC25-130-800.60. Terms and conditions for liability insurance.

(a) The division shall require the applicant to submit prior to permit issuance a certificate issued by an insurance company licensed to do business in the Commonwealth certifying that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operations for which the permit is sought. Such policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons injured or property damaged as a result of the surface coal mining and reclamation operations, including the use of explosives, and who are entitled to compensation under the applicable provisions of Virginia law. Minimum insurance coverage under split limit for bodily injury and property damage shall be \$300,000 for each occurrence and \$500,000 aggregate. Minimum insurance coverage for bodily injury and property damage combined shall be \$1,000,000 for each occurrence and \$1,000,000 aggregate.

(b) The policy shall be maintained in full force during the life of the permit or any renewal thereof, including the liability period necessary to complete all reclamation operations under this chapter.

(c) The policy shall include a rider requiring that the insurer notify the division whenever substantive changes are made in the policy including any termination or failure to renew.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 800.60, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

Part 801

Coal Surface Mining Reclamation Fund, Penalties, and Self-Bonding

4VAC25-130-801.2. Scope.

The regulations of this Part establish the procedures and requirements for an alternative bonding system through which the division will implement and administer the Coal Surface Mining Reclamation Fund (Pool Bond Fund) as established under Article 5 (§ 45.1-270.1 et seq.) of Chapter 19 of Title 45.1 of the Code of Virginia.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 801.2, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-801.4. Objective.

The objective of this Part is to set forth the requirements and procedures that a participating applicant must comply with in order to be relieved of the bonding requirements of 4VAC25-130-800.14 and 4VAC25-130-800.17.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 801.4, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-801.11. Participation in the pool bond fund.

(a) Participation in the Pool Bond Fund shall be at the option of any applicant for a permit under the Act and the regulations promulgated thereunder who can demonstrate to the division's satisfaction at least a consecutive three-year history of compliance under the Act or any other comparable State or Federal Act.

(b) All participants in the Pool Bond Fund shall:

- (1) Pay all entrance fees to the Pool Bond Fund as required by 4VAC25-130-801.12(a); and
- (2) Comply with the applicable parts of section 45.1-241 of the Code of Virginia.

(c) Commencement of participation in the Pool Bond Fund shall constitute an irrevocable commitment by the permittee to participate therein as to the applicable permit and for the duration of the coal surface mining operations covered thereunder.

(d) All fees and taxes are nonrefundable.

(e) The division shall, as provided by section 45.1-270.5(B) of the Code of Virginia, utilize those monies from the interest accrued to the fund which are required to properly administer the Pool Bond Fund. These monies shall be used to support one position for administration of the Pool Bond Fund; however, if it is apparent that such position is insufficient to ensure proper administration of the Pool Bond Fund, the division may upon proof of need, and upon concurrence with the Pool Bond Fund Advisory Board obtain additional assistance.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 801.11, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-801.12. Entrance fee and bond.

(a) An applicant filing a permit application for coal surface mining operations and electing to participate in the Pool Bond Fund shall prior to permit issuance pay into the Pool Bond Fund an entrance fee for the applicable permit application. An entrance fee of \$5,000 shall be required of all applicants who elect to participate in the Fund when the total balance of the Fund is determined to be less than \$1,750,000. The entrance fee shall be reduced to \$1,000 when the total Fund balance is greater than \$2 million. A renewal fee of \$1,000 shall be required of all permittees in the Fund at permit renewal. The fee shall be made payable to the Treasurer of Virginia and shall be in the form of cash, cashier's check, certified check, or personal check.

(b) An applicant electing to participate in the Pool Bond Fund shall, in accordance with section 45.1-241 of the Code of Virginia, furnish a bond as provided by 4VAC25-130-800.12, 4VAC25-130-800.14 and 4VAC25-130-800.16:

(1) For those underground mining operations participating in the Fund prior to July 1, 1991, in the amount of \$1,000 per acre covered by the permit. In no event shall the total bond be less than \$40,000, except that on permits which have completed all mining and for which completion reports have been approved prior to July 1, 1991, the total bond shall not be less than \$10,000.

(2) For underground mining operations entering the Fund on or after July 1, 1991, and for additional acreage bonded on or after July 1, 1991, the amount of \$3,000 per acre. In no event shall the total bond for such underground operations entering the Fund on or after July 1, 1991, be less than \$40,000.

(3) For all other coal surface mining operations participating in the Fund prior to July 1, 1991, the amount of \$1,500 per acre covered by each permit. In no event shall such total bond be less than \$100,000, except that on permits which have completed all mining and for which completion reports have been approved prior to July 1, 1991, the total bond shall not be less than \$25,000.

(4) For other coal mining operations entering the Fund on or after July 1, 1991, and for additional acreage bonded on or after July 1, 1991, the amount of \$3,000 per acre. In no event shall the total bond for such operations entering the Fund on or after July 1, 1991, be less than \$100,000.

(c) The Director may accept the bond of an applicant of an underground mining operation without separate surety, as provided by 4VAC25-130-801.13, upon a showing by such applicant of a net worth, total assets minus total liabilities (certified by an independent certified public accountant), equivalent to \$1 million. Such net worth shall be, during the existence of the

permit, certified annually by an independent certified public accountant and the certification submitted on the anniversary date of the permit.

(d) The Director may accept the bond of an applicant of a surface mining operation or associated facility without separate surety, upon a showing by the applicant of those conditions set forth in 4VAC25-130-801.13(b).

(e) The bond liability shall extend to cover subsidence and mine drainage in accordance with 4VAC25-130-800.14(c).

(f) The amount of the performance bond liability applicable to a permit shall be adjusted by the division as the acreage in the permit area is revised. The bond adjustments are not subject to the bond release procedures of 4VAC25-130-801.17.

(g) Any mining operation participating in the Fund that has been in temporary cessation for more than six months as of July 1, 1991, shall, within ninety days of that date, post bond equal to the total estimated cost of reclamation for all portions of the permitted site which are in temporary cessation. Any mining operation participating in the Fund that has been in temporary cessation six months or less as of July 1, 1991, shall, within 90 days after the date on which the operation has been in temporary cessation for more than six months, post bond equal to the total estimated cost of reclamation for all portions of the permitted site which are in temporary cessation. Any mining operation participating in the Fund that enters temporary cessation on or after July 1, 1991, shall, prior to the date on which the operation has been in temporary cessation for more than six months, post bond equal to the total estimated cost of reclamation for all portions of the permitted site which are in temporary cessation. The amount of bond required for each area bonded under this Subsection shall be determined by the division in accordance with 4VAC25-130-800.14. Such bond shall remain in effect throughout the remainder of the period during which the site is in temporary cessation. At such time as the site returns to active status, the bond posted under this Subsection may be released, provided the permittee has posted bond pursuant to Subsection (b) of this section.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 801.12, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-801.13. Self-bonding.

(a) The division may accept a self-bond from the applicant of a proposed underground mining operation.

(1) The applicant shall designate the:

(i) Name and address of a suitable agent to receive service of process in the Commonwealth.

(ii) Name and address of the certified public accountant(s) who prepared the statement

required by this section.

(iii) Location of the financial records used to prepare the C.P.A. statement required by this section.

(2) The applicant has a net worth, certified by an independent Certified Public Accountant in the form of an unqualified opinion appended to the financial statement submitted, of no less than \$1 million after total liabilities are subtracted from total assets. If the applicant is a subsidiary corporation, the applicant's parent organization's net worth need only be certified by the independent Certified Public Accountant, if the applicant uses or includes any assets or liabilities of the parent organization in computing or arriving at the applicant's net worth. Where the division has a valid reason to believe that the permittee's net worth is less than required by this Subsection, it may require a new Certified Public Accountant's statement and certification.

(3)(i) A cognovit note must be executed by the applicant, and said agreement must also be executed by:

(A) If a corporation, two corporate officers who are authorized to sign the note by a resolution of the board of directors, a copy of which shall be provided;

(B) To the extent that the history or assets of a parent organization are relied upon to make the showings of this Part, the parent organization of which it is a subsidiary, whether first-tier, second-tier, or further removed, in the form of (A) above;

(C) If the applicant is a partnership, all of its general partners and their parent organization or principal investors; and

(D) If the applicant is a married individual, the applicant's spouse;

(ii) Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the note;

(iii) The cognovit note shall be a binding obligation, jointly and severally, on all who execute it;

(iv) For the purposes of this Paragraph, principal investor or parent organization means anyone with a 10 percent or more beneficial ownership interest, directly or indirectly, in the applicant.

(b) The division may accept a self-bond from the applicant of a proposed surface mining operation or associated facility. The applicant shall provide the:

(1) Name and address of a suitable agent to receive service of process in the Commonwealth.

(2) Evidence indicating a history of satisfactory continuous operation.

(3) Evidence substantiating the applicant's financial solvency, with the appropriate financial documentation required by Paragraph (a)(2) of this section.

(4) Indemnity agreement:

- (i) Containing the date of execution;
- (ii) Made payable to the "Treasurer of Virginia";
- (iii) Immediately due and payable in the event of bond forfeiture of the permit;
- (iv) Payable in a sum certain of money;
- (v) Signed by the maker(s);
- (vi) The indemnity agreement must be executed by the applicant and by:
 - (A) If a corporation, two corporate officers who are authorized to sign the agreement by a resolution of the Board of Directors, a copy of which shall be provided;
 - (B) To the extent that the history or assets of a parent organization are relied upon to make the showings of this Part, the parent organization of which it is a subsidiary, whether first-tier, second-tier, or further removed, in the form of (A) above;
 - (C) If the applicant is a partnership, all of its general partners and their parent organization or principal investors; and
 - (D) If the applicant is a married individual, the applicant's spouse;
- (vii) Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the indemnity agreement;
- (viii) The indemnity agreement shall be a binding obligation, jointly and severally, on all who execute it;
- (ix) For purposes of this Paragraph, principal investor or parent organization means anyone with a 10 percent or more beneficial ownership interest, directly or indirectly, in the applicant.

(c) Whenever a participant in the Pool Bond Fund applies for an additional permit or permits, the C.P.A. certification required by Paragraph (a)(2) or (b)(3) of this section shall be updated reflecting those prior reclamation obligations and self-bonding liabilities still in effect.

(d) If at any time the conditions upon which the self-bond was approved no longer prevail, the division shall require the posting of a surety or collateral bond before coal surface mining operations may continue. The permittee shall immediately notify the division of any change in his total liabilities or total assets which would jeopardize the support of the self-bond. If the permittee fails to have sufficient resources to support the self-bond, he shall be deemed to be without bond coverage in violation of 4VAC25-130-800.11(b).

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 801.13, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July

17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-801.14. Reclamation tax.

(a) If at the end of any calendar quarter the total balance of the Pool Bond Fund, including interest thereon, is less than \$1,750,000, the tax shall be initiated. All permittees participating in the Pool Bond Fund shall pay within 30 days after the end of each taxable calendar quarter, an amount equal to:

(1) Four cents per clean ton of coal produced by the surface mining operation of the permit during the taxable calendar quarter.

(2) Three cents per clean ton of coal produced by the underground mining operation of the permit during the taxable calendar quarter.

(3) One and one-half cents per clean ton of coal processed or loaded by the preparation or loading facility operation of the permit during the taxable calendar quarter.

(b) If at the end of any calendar quarter the total balance of the Pool Bond Fund, including interest thereon, exceeds \$2 million, payments shall be deferred until required by 4VAC25-130-801.14(a).

(c) No permittee shall pay the reclamation tax on more than five million tons of coal produced per calendar year, regardless of the number of permits held by that permittee, except as provided in Subsection (e) of this section.

(d) In no event except as provided in Subsection (e) of this section, shall the division require any permittee participating in the Pool Bond Fund:

(1) Holding more than one type of permit to pay a reclamation tax at a rate in excess of five and one-half cents per ton on coal originally surface mined by that permittee or in excess of four and one-half cents per ton on coal originally deep mined by that permittee; or

(2) Holding one permit upon which coal is both mined and processed or loaded to pay more than the tax applicable to the surface mining operation or underground mining operation. However, the permittee shall pay the one and one-half cents per clean ton for all coal processed and/or loaded at the permit which originated from other permits during the calendar quarter.

(e) Upon permit issuance for which bond is provided pursuant to this Part, the permittee shall pay the applicable reclamation tax required by Subsection (a) into the Pool Bond Fund on coal mined and removed under the permit during the one year period commencing with and running from the date of the commencement of coal production, processing or loading from that permit.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 801.14, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July

17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-801.15. Collection of the reclamation tax and penalties for non-payment.

(a) The division shall notify, in writing, each permittee participating in the Pool Bond Fund, at the end of each calendar quarter, of those periods during which the reclamation taxes are applicable or deferred. The permittee shall on a quarterly basis file a notarized copy of the "Coal Surface Mining Reclamation Fund Tax Reporting Form" with the division: Attention Director. The permittee shall file the report by permit and applicable tonnage mined, processed, and/or loaded no later than the 15th day of the month after the end of each calendar quarter, even if no coal was mined, processed and/or loaded on the permit(s).

(b) Each permittee participating in the Fund shall submit to the division's Big Stone Gap Office full payment of the appropriate reclamation taxes required under 4VAC25-130-801.14(a) or (e) within 30 days after the end of the calendar quarter, when the taxes are applicable. Payment of the reclamation taxes shall be in cash, cashier's check, certified check or personal check made payable to the Treasurer of Virginia.

(c) Where the division has reason to suspect inaccurate reporting of the production of clean tons of coal, it may request to audit the relevant books and records of the permittee upon which the taxes paid under this Part are based. The request shall be in writing and sent to the permittee or his authorized representative by certified mail, return receipt requested. Failure to consent to the request for the audit shall be deemed a violation of this Part and subject to the enforcement procedures of Part 843. The audit shall be conducted at reasonable times during normal business hours and the permittee shall be given adequate advance notice of when the audit is to be conducted.

(d) If the permittee fails to make full payment of the reclamation taxes due under 4VAC25-130-801.14, the division shall issue a notice of violation in accordance with 4VAC25-130-843.12. The notice shall state that upon failure to make full payment within 15 calendar days thereafter, the division shall issue a cessation order to the permittee for failure to abate the notice of violation. If the cessation order is issued, the enforcement procedures of Part 843 shall apply.

(e) The division shall assess a civil penalty in accordance with Part 845, for the permittee's violation of the conditions set forth in this Part. Civil penalties imposed upon the permittee for violation of this section, shall be placed in the Pool Bond Fund.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 801.15, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-801.16. Reinstatement to the pool bond fund.

(a) A permittee who has defaulted on any reclamation obligation and has thereby caused the Pool Bond Fund to incur reclamation expenses as a result thereof, shall not be eligible to participate in the Pool Bond Fund for any new permit or any permit renewal thereafter until full restitution for such default has been made to the Pool Bond Fund. The Director at his discretion and with the recommendation from the Coal Surface Mining Reclamation Pool Bond Fund Advisory Committee may require that the person seeking reinstatement pay interest at the composite rate determined by the Treasurer of Virginia compounded monthly.

(b) Compliance with Subsection (a) shall be a prerequisite to the filing by the permittee of any new permit application or renewal under the Act, but shall not affect the permittee's need to comply with all other requirements of the Act and the regulations promulgated thereunder in applying for a permit.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 801.16, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-801.17. Bond release application.

The permittee participating in the Pool Bond Fund, or any person authorized to act upon his behalf, may file an application with the division for the Phase I, II or III release of the bond furnished in accordance with 4VAC25-130-801.12 (b) for the permit area or any applicable increment thereof. The bond release application, the procedural requirements and the released percentages shall be consistent with the release criteria of 4VAC25-130-800.40. However, in no event shall the total bond of the permit be less than the minimum amounts established pursuant to §§ 45.1-241 and 45.1-270.3 B of the Virginia Coal Surface Mining Control and Reclamation Act prior to completion of Phase III reclamation of the entire permit area.

Statutory Authority

§§ 45.1-161.3, 45.1-230, and 45.1-241 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 801.17, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 20, Issue 23, eff. October 12, 2004.

4VAC25-130-801.18. Criteria for release of bond.

(a) The division shall release bond furnished in accordance with §§ 45.1-241 and 45.1-270.3 of the Virginia Coal Surface Mining Control and Reclamation Act through the standards specified at 4VAC25-130-800.40 upon receipt of an application for Phase I, II or III release.

(b) The division shall terminate jurisdiction for the permit area, or any increment thereof upon approval of the Phase III bond release for that area.

(c) In the event a forfeiture occurs, the division may, after utilizing the available bond monies, utilize the Fund as necessary to complete reclamation liabilities for the permit area.

Statutory Authority

§§ 45.1-161.3, 45.1-230, 45.1-241 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 801.18, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 20, Issue 23, eff. October 12, 2004.

4VAC25-130-801.19. Forfeiture.

In the event of bond forfeiture pursuant to 4VAC25-130-800.50, the bond submitted in accordance with 4VAC25-130-801.12(b) shall:

(a) Be utilized by the division in performing the necessary reclamation work before any monies are utilized from the Pool Bond Fund; however,

(b) If an emergency, imminent danger or harm to the public or environment exists, the division may utilize the Pool Bond Fund for reclamation of those mining operations bonded pursuant to 4VAC25-130-801.12 (c) and (d) if the Director determines that collection will delay the essential and necessary reclamation work required. Bond amounts subsequently collected shall be deposited into the Pool Bond Fund, up to but not exceeding the full amount of liabilities which the Pool Bond Fund incurred.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 801.19, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

Part 815

Permanent Program Performance Standards—Coal Exploration

4VAC25-130-815.1. Scope and purpose.

This Part sets forth performance standards required for coal exploration which substantially disturbs the natural land surface. If necessary to provide adequate environmental protection or comply with the standards of this chapter, coal exploration operations may be further required to comply with the applicable standards of Parts 816 through 828.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 815.1, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-815.2. Permitting information.

Notwithstanding cross-references in other Parts which may be otherwise construed, Part 772 establishes the notice and permit information requirements for coal exploration.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 815.2, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-815.13. Required documents.

Each person who conducts coal exploration shall, while in the exploration area, have available a copy of the filed notice of intention to explore or a copy of the exploration permit for review by the authorized representative of the division upon request.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 815.13, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-815.15. Performance standards for coal exploration.

(a) Habitats of unique or unusually high value for fish, wildlife, and other related environmental values and critical habitats of threatened or endangered species identified pursuant to the Endangered Species Act of 1973 (16 USC § 1531 et seq.) shall not be disturbed during coal exploration. Such habitats shall include wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, reproduction and nursery areas, and wintering areas.

(b) All roads or other transportation facilities used for coal exploration shall comply with the applicable provisions of 4VAC25-130-816.150(b) through (f), 4VAC25-130-816.180 and 4VAC25-130-816.181.

(1) Vehicular travel on other than established graded and surfaced roads shall be limited by the person who conducts coal exploration to that absolutely necessary to conduct the exploration. Travel shall be confined to graded and surfaced roads during periods when excessive damage to vegetation or rutting of the land surface could result.

(2) Any new road in the exploration area which is used less than 6 months shall comply with the provisions of 4VAC25-130-816.150. If the road will be frequently used longer than 6 months, it shall comply with the provisions of 4VAC25-130-816.151.

(3) Existing roads may be used for exploration in accordance with the following:

(i) All applicable Federal, State and local requirements shall be met.

(ii) If the road is significantly altered for exploration, including, but not limited to, change of grade, widening, or change of route, or if use of the road for exploration contributes additional suspended solids to streamflow or runoff, then Paragraph (i) of this section shall apply to all areas of the road which are altered or which result in such additional contributions.

(iii) If the road is significantly altered for exploration activities and will remain as a permanent road after exploration activities are completed, the person conducting exploration shall ensure that the requirements of 4VAC25-130-816.150 through 4VAC25-130-816.152, as appropriate, are met for the design, construction, alteration and maintenance of the road.

(4) Promptly after exploration activities are completed, existing roads used during exploration shall be reclaimed either--

(i) To a condition equal to or better than their pre-exploration condition; or

(ii) To a condition required for permanent roads under 4VAC25-130-816.150 through 4VAC25-130-816.152, as appropriate.

(c) If excavations, artificially flat areas, or embankments are created during exploration, these areas shall be returned to the approximate original contour promptly after such features are no longer needed for coal exploration.

(d) Topsoil shall be separately removed, stored, and redistributed on areas disturbed by coal exploration activities as necessary to assure successful revegetation or as required by the division.

(e) All areas disturbed by coal exploration activities shall be revegetated in a manner that encourages prompt revegetation and recovery of a diverse, effective, and permanent vegetative cover. Revegetation shall be accomplished in accordance with the following:

(1) All areas disturbed by coal exploration activities shall be seeded or planted to the same seasonal variety native to the areas disturbed. If the land use of the exploration area is

intensive agriculture, planting of the crops normally grown will meet the requirements of this Paragraph.

(2) The vegetative cover shall be capable of stabilizing the soil surface from erosion.

(f) Diversions of overland flows and ephemeral, perennial, or intermittent streams shall be made in accordance with 4VAC25-130-816.43.

(g) Each exploration hole, borehole, well, or other exposed underground opening created during exploration shall be reclaimed in accordance with 4VAC25-130-816.13 through 4VAC25-130-816.15.

(h) All facilities and equipment shall be promptly removed from the exploration area when they are no longer needed for exploration, except for those facilities and equipment that the division determines may remain to--

(1) Provide additional environmental data;

(2) Reduce or control the onsite and offsite effects of the exploration activities; or

(3) Facilitate future surface mining and reclamation operations by the person conducting the exploration.

(i) Coal exploration shall be conducted in a manner which minimizes disturbance of the prevailing hydrologic balance in accordance with 4VAC25-130-816.41 through 4VAC25-130-816.49. The division may specify additional measures which shall be adopted by the person engaged in coal exploration.

(j) Acid- or toxic-forming materials shall be handled and disposed of in accordance with 4VAC25-130-816.41(b), 4VAC25-130-816.41(f), and 4VAC25-130-816.102(f). The division may specify additional measures which shall be adopted by the person engaged in coal exploration.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 815.15, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

Part 816

Permanent Program Performance Standards—Surface Mining Activities

4VAC25-130-816.11. Signs and markers.

(a) Specifications. Signs and markers required under this Part shall—

(1) Be posted, maintained, and removed by the person who conducts the surface mining activities;

(2) Be of a uniform design throughout the operation that can be easily seen and read;

(3) Be made of durable material;

- (4) For permit boundary markers on areas that are located on steep slopes above private dwellings or other occupied buildings, be made of or marked with fluorescent or reflective paint or material; and
 - (5) Conform to local ordinances and codes.
- (b) Maintenance. Signs and markers shall be maintained during the conduct of all activities to which they pertain.
- (c) Mine and permit identification signs.
- (1) Identification signs shall be displayed at each point of access to the permit area from public roads.
 - (2) Signs shall show the name, business address, and telephone number of the permittee and the identification number of the current permit authorizing surface coal mining activities.
 - (3) Signs shall be retained and maintained until after the release of all bonds for the permit area.
- (d) Perimeter markers. The perimeter of a permit area shall be clearly marked prior to the permit review conducted by the division's field enforcement personnel. The perimeter shall be clearly marked by flagging, stakes or signs. All markers shall be easily visible from adjacent markers. The approximate outer perimeter of the solid portion of any pre-existing bench shall be closely marked prior to permit review.
- (e) Buffer zone markers. Buffer zones shall be marked along their boundaries, prior to permit review conducted by the division's field enforcement personnel. The boundaries shall be clearly marked by flagging, stakes or signs as required under 4VAC25-130-816.57. All markers of the buffer zone shall be easily visible from adjacent markers.
- (f) Blasting signs. If blasting is conducted incident to surface mining activities, the person who conducts these activities shall:
- (1) Conspicuously place signs reading "Blasting Area" along the edge of any blasting area that comes within 100 feet of any public road right of way, and at the point where any other road provides access to the blasting area; and
 - (2) At all entrances to the permit area from public roads or highways place conspicuous signs which state "Warning! Explosives In Use" which clearly list and describe the meaning of the audible blast warning and all clear signals that are in use, and which explain the marking of blasting areas and charged holes awaiting firing within the permit area.
- (g) Topsoil markers. Where topsoil or other vegetation-supporting material is segregated and stockpiled as required under 4VAC25-130-816.22, the stockpiled material shall be clearly marked.
- (h) Incremental bonding markers. When the permittee elects to increment the amount of performance bond during the term of the permit, he shall, if required by the division, identify the initial and successive incremental areas for bonding by clearly marking such areas (with markers different from the perimeter markers) prior to disturbing the incremental area(s).

Statutory Authority

§§ 45.1-161.3, 45.1-230 and 45.1-242 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.11, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 22, Issue 24, eff. September 6, 2006.

4VAC25-130-816.13. Casing and sealing of drilled holes; general requirements.

Each exploration hole, other drill or borehole, well, or other exposed underground opening shall be cased, sealed, or otherwise managed, as approved by the division, to prevent acid or other toxic drainage from entering ground or surface waters, to minimize disturbance to the prevailing hydrologic balance, and to ensure the safety of people, livestock, fish, and wildlife, and machinery in the permit and adjacent areas. If these openings are uncovered or exposed by surface mining activities within the permit area, they shall be permanently closed, unless approved for water monitoring, or otherwise managed in a manner approved by the division. Use of a drilled hole or borehole or monitoring well as a water well must meet the provisions of 4VAC25-130-816.41. This section does not apply to holes solely drilled and used for blasting.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.13, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-816.14. Casing and sealing of drilled holes; temporary.

Each exploration hole, other drill or boreholes, wells and other exposed underground openings which have been identified in the approved permit application for use to return coal processing waste or water to underground workings, or to be used to monitor ground water conditions in either or both the saturated and unsaturated zone shall be temporarily sealed before use and protected during use by barricades, or fences, or other protective devices, approved by the division. These devices shall be periodically inspected and maintained in good operating condition by the permittee.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.14, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-816.15. Casing and sealing of drilled holes; permanent.

When no longer needed for monitoring or other use approved by the division upon a finding of no adverse environmental or health and safety effect, or unless approved for transfer as a water well under 4VAC25-130-816.41, each exploration hole, other drilled hole or borehole, well, and other exposed underground opening shall be capped, sealed, backfilled, or otherwise properly managed, as required by the division under 4VAC25-130-816.13 and consistent with 30 CFR 75.1711 and the standards for oil and gas wells of the Virginia Division of Gas and Oil, as appropriate. Permanent closure measures shall be designed to prevent access to the mine workings by people, livestock, fish and wildlife, and machinery, and to keep acid or other toxic drainage from entering ground or surface waters.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.15, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-816.22. Topsoil and subsoil.

(a) Removal.

(1)(i) All topsoil shall be removed as a separate layer from the area to be disturbed, and segregated.

(ii) Where the topsoil is of insufficient quantity or poor quality for sustaining vegetation, the materials approved by the division in accordance with Paragraph (b) of this section shall be removed as a separate layer from the area to be disturbed, and segregated.

(2) If topsoil is less than 6 inches thick, the permittee may remove the topsoil and the unconsolidated materials immediately below the topsoil and treat the mixture as topsoil.

(3) The division may choose not to require the removal of topsoil for minor disturbances which--

(i) Occur at the site of small structures, such as power poles, signs, or fence lines; or

(ii) Will not destroy the existing vegetation and will not cause erosion.

(4) Timing. All material to be removed under this section shall be removed after the vegetative cover that would interfere with its salvage is cleared from the area to be disturbed,

but before any drilling, blasting, mining, or other surface disturbance takes place.

(b) Substitutes and supplements.

(1) Selected overburden materials may be substituted for, or used as a supplement to topsoil if the permittee demonstrates to the division, in accordance with 4VAC25-130-780.18, that the resulting soil medium is equal to, or more suitable for sustaining vegetation than, the existing topsoil, and the resulting soil medium is the best available in the permit area to support revegetation.

(2) Substituted or supplemental material shall be removed, segregated, and replaced in compliance with the requirements of this section for topsoil.

(3) Selected overburden materials may be substituted for or used as a supplement to topsoil, if the slope of the land containing the topsoil is greater than 60 percent (3v:5h) and the selected overburden materials satisfy the following criteria:

(i) The results of the analyses of the overburden required in 4VAC25-130-780.18 demonstrates the feasibility of using the overburden materials.

(ii) The substitute material has a pH greater than 5.0, has a net acidity of less than five tons per 1,000 tons of material or a net alkalinity, and is suitable for sustaining vegetation consistent with the standards for vegetation in 4VAC25-130-816.111 through 4VAC25-130-816.116, and the approved postmining land use.

(c) Storage.

(1) Materials removed under Paragraph (a) of this section shall be segregated and stockpiled when it is impractical to redistribute such materials promptly on regraded areas.

(2) Stockpiled materials shall--

(i) Be selectively placed on a stable site within the permit area;

(ii) Be protected from contaminants and unnecessary compaction that would interfere with revegetation;

(iii) Be protected from wind and water erosion through prompt establishment and maintenance of an effective, quick growing vegetative cover or through other measures approved by the division; and

(iv) Not be moved until required for redistribution unless approved by the division.

(3) When long-term surface disturbances will result from facilities such as support facilities and preparation plants and where stockpiling of materials removed under Paragraph (a)(1) of this section would be detrimental to the quality or quantity of those materials, the division may approve the temporary distribution of the soil materials so removed to an approved site within the permit area to enhance the current use of that site until the materials are needed for later reclamation, provided that--

(i) Such action will not permanently diminish the capability of the topsoil of the host site;

and

(ii) The material will be retained in a condition more suitable for redistribution than if stockpiled.

(d) Redistribution.

(1) Topsoil materials and substitutes removed under Paragraph (a) and (b) of this section shall be redistributed in a manner that--

(i) Achieves an approximately uniform, stable thickness when consistent with the approved postmining land use, contours, and surface-water drainage systems. Soil thickness may also be varied to the extent such variations help meet the specific revegetation goals identified in the permit;

(ii) Prevents excess compaction of the materials; and

(iii) Protects the materials from wind and water erosion before and after seeding and planting.

(2) Before redistribution of the material removed under Paragraph (a) of this section, the regraded land shall be treated if necessary to reduce potential slippage of the redistributed material and to promote root penetration. If no harm will be caused to the redistributed material and reestablished vegetation, such treatment may be conducted after such material is replaced.

(3) The division may choose not to require the redistribution of topsoil or topsoil substitutes on the approved postmining embankments of permanent impoundments or of roads if it determines that--

(i) Placement of topsoil or topsoil substitutes on such embankments is inconsistent with the requirement to use the best technology currently available to prevent sedimentation; and

(ii) Such embankments will be otherwise stabilized.

(4) Nutrients and soil amendments shall be applied to the initially redistributed material when necessary to establish the vegetative cover. The types and amounts of nutrients and soil amendments shall be determined by soil tests performed by a qualified laboratory using standard methods which are approved by the division. If seeding is done without a site specific soil test--

(i) Fertilization rates of 300 pounds of 16-27-14 or 500 pounds of 10-20-10 or equivalents per acre shall be used.

(ii) Liming rates shall be in accordance with the following table:

Tons of Lime Needed per Acre to Increase pH to:	
Mine Spoil pH	
5.1 - 5.5	5.6 - 6.2

Test	Sandstone	Shale	Mixed	Sandstone	Shale	Mixed
4.0 - 4.5	2	3	2	3	5	4
4.6 - 5.0	1	3	2	2	4	3
5.1 - 5.5	0	2	1	1	3	2
5.6 - 6.0	0	1	0	0	2	1

(iii) Soil tests shall be performed promptly after topsoiling but before application of any supplementary nutrients and any additional lime and fertilizer applied as necessary.

(e) Subsoil segregation. The division may require that the B horizon, C horizon, or other underlying strata, or portions thereof, be removed and segregated, stockpiled, and redistributed as subsoil in accordance with the requirements of Paragraphs (c) and (d) of this section if it finds that such subsoil layers are necessary to comply with the revegetation requirements of 4VAC25-130-816.111, 4VAC25-130-816.113, 4VAC25-130-816.114 and 4VAC25-130-816.116.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.22, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 25, Issue 12, eff. March 18, 2009.

4VAC25-130-816.41. Hydrologic-balance protection.

(a) General. All surface mining and reclamation activities shall be conducted to minimize disturbance of the hydrologic balance within the permit and adjacent areas, to prevent material damage to the hydrologic balance outside the permit area, to assure the protection or replacement of water rights, and to support approved postmining land uses in accordance with the terms and conditions of the approved permit and the performance standards of this Part. The division may require additional preventative, remedial, or monitoring measures to assure that material damage to the hydrologic balance outside the permit area is prevented. Mining and reclamation practices that minimize water pollution and changes in flow shall be used in preference to water treatment.

(b) Ground-water protection. In order to protect the hydrologic balance, surface mining activities shall be conducted according to the plan approved under 4VAC25-130-780.21(h) and the following:

- (1) Ground-water quality shall be protected by handling earth materials and runoff in a manner that minimizes acidic, toxic, or other harmful infiltration to ground-water systems and by managing excavations and other disturbances to prevent or control the discharge of pollutants into the ground water.

(2) Ground-water quantity shall be protected by handling earth materials and runoff in a manner that will restore the approximate premining recharge capacity of the reclaimed area as a whole, excluding coal mine waste disposal areas and fills, so as to allow the movement of water to the ground water system.

(c) Ground-water monitoring.

(1) Ground-water monitoring shall be conducted according to the ground-water monitoring plan approved under 4VAC25-130-780.21(i). The division may require additional monitoring when necessary.

(2) Representative monitoring.

(i) Representative monitoring points shall be established within 100 feet downgradient from the initial disturbance within each representative area. This distance may be modified by the division if it is demonstrated in the permit application that the 100 feet distance is inappropriate for the monitoring point.

(ii) If degradation, contamination or diminution of water quality or quantity are evident through monitoring, then additional monitoring and/or remedial action may be required by the division.

(3) Source monitoring.

(i). Source monitoring shall be used near isolated acid-producing or toxic-producing material. Monitoring shall be by piezometers or other equipment suitable for monitoring in the unsaturated zone. Piezometers or alternate equipment shall be installed in backfilled material during or within 45 days after final grading of the area. Installation in fill or temporary storage areas shall be as soon as practicable. Monitoring points shall be of sufficient number and locations so that adverse impacts can be readily detected.

(ii) Representative monitoring may be required by the division in addition to source monitoring when the operation may adversely impact usable ground waters.

(4) Well drilling, construction and completion.

(i) When wells are used, they shall be drilled either to the first water-producing zone or, if no water is encountered, to a depth of 100 feet below each coal seam to be mined. The division may require deeper drilling if site conditions indicate the potential for adverse impacts to a known water-producing zone which is at greater depth.

(ii) Monitoring wells shall be drilled an additional 20 feet into the water-producing zone to aid in pumping.

(iii) Monitoring wells shall:

(A) Accommodate a four inch (4") submersible pump for sample extraction and measurement of field parameters. Other diameters may be approved by the division if sample extraction is allowed.

(B) Be constructed in a manner which isolates the water-producing zone to be monitored and prevents the mixing of ground waters.

(C) Be grouted from the surface to at least one foot into bedrock, with all leakage around the well casing prevented.

(D) Be capped, locked, and labeled with an identification number.

(E) Be properly developed and the final yield reported.

(F) Not be constructed or packed with materials which would adversely affect the monitoring results obtained.

(iv) Existing wells may be used for monitoring provided that:

(A) The well is located at a point where data representative of the permit or adjacent area will be obtained.

(B) The well penetrates the water-producing zone to be monitored.

(C) The well is constructed in a manner which effectively isolates the water-producing zone.

(D) The well meets the standards of Paragraph (c)(4) above.

(E) Filtering systems and water softeners are not present which may alter the quality of the water sample. Filters or softeners may be disconnected or bypassed during sampling.

(5) Ground-water monitoring data shall be submitted within 30 days after the end of the calendar quarter to the division. More frequent reporting may be prescribed by the division. Monitoring reports shall include analytical results from each sample taken during the reporting period. When the analysis of any ground-water sample indicates noncompliance with the permit conditions, then the permittee shall promptly notify the division and immediately take the actions provided for in 4VAC25-130-773.17(e) and 4VAC25-130-780.21(h).

(6) Ground-water monitoring shall proceed through mining and continue during reclamation until bond release. Consistent with the procedures of 4VAC25-130-774.13, the division may modify the monitoring requirements, including the parameters covered and the sampling frequency, if the permittee demonstrates, using the monitoring data obtained under this Paragraph, that--

(i) The operation has minimized disturbance to the hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses; and the water rights of other users have been protected or replaced; or

(ii) Monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under 4VAC25-130-780.21(i).

(7) Equipment, structures, and other devices used in conjunction with monitoring the quality and quantity of ground water onsite and offsite shall be properly installed, maintained, and operated and shall be removed by the permittee when no longer required by the division.

(d) Surface-water protection. In order to protect the hydrologic balance, surface mining activities shall be conducted according to the plan approved under 4VAC25-130-780.21(h), and the following:

(1) Surface-water quality shall be protected by handling earth materials, ground-water discharges, and runoff in a manner that minimizes the formation of acidic or toxic drainage; prevents, to the extent possible using the best technology currently available, additional contribution of suspended solids to streamflow outside the permit area; and otherwise prevents water pollution. If drainage control, restabilization and revegetation of disturbed areas, diversion of runoff, mulching, or other reclamation and remedial practices are not adequate to meet the requirements of this section and 4VAC25-130-816.42, the permittee shall use and maintain the necessary water treatment facilities or water quality controls.

(2) Surface-water quality and flow rates shall be protected by handling earth materials and runoff in accordance with the steps outlined in the plan approved under 4VAC25-130-780.21(h).

(e) Surface-water monitoring.

(1) Surface water monitoring shall be conducted according to the surface-water monitoring plan approved under 4VAC25-130-780.21(j). The division may require additional monitoring when necessary.

(2) Surface-water monitoring data shall be submitted every three months to the division or more frequently as prescribed by the division. Monitoring reports shall include analytical results from each sample taken during the reporting period. When the analysis of any surface-water sample indicates noncompliance with the permit conditions, the permittee shall promptly notify the division and immediately take the actions provided for in 4VAC25-130-773.17(e) and 4VAC25-130-780.21(h). Reporting shall be in accordance with the National Pollutant Discharge Elimination System (NPDES) permit requirements.

(3) Surface-water monitoring shall proceed through mining and continue during reclamation until bond release. Consistent with 4VAC25-130-774.13, the division may modify the monitoring requirements in accordance with the NPDES permit, including the parameters covered and sampling frequency, if the permittee demonstrates, using the monitoring data obtained under this Paragraph, that--

(i) The operation has minimized disturbance to the hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses; and the water rights of other users have been protected or replaced; or

(ii) Monitoring is no longer necessary to achieve the purposes set forth in the monitoring

plan approved under 4VAC25-130-780.21(j).

(4) Equipment, structures, and other devices used in conjunction with monitoring the quality and quantity of surface water onsite and offsite shall be properly installed, maintained, and operated and shall be removed by the permittee when no longer required by the division.

(f) Acid-and toxic-forming materials.

(1) Drainage from acid- and toxic-forming materials into surface water and ground water shall be avoided by--

(i) Identifying and burying and/or treating, when necessary, materials which may adversely affect water quality, or be detrimental to vegetation or to public health and safety if not buried and/or treated, and

(ii) Storing materials in a manner that will protect surface water and ground water by preventing erosion, the formation of polluted runoff, and the infiltration of polluted water. Storage shall be limited to the period until burial and/or treatment first become feasible, and so long as storage will not result in any risk of water pollution or other environmental damage.

(2) Storage, burial or treatment practices shall be consistent with other material handling and disposal provisions of this chapter.

(g) Transfer of wells. Before final release of bond, exploratory or monitoring wells shall be sealed in a safe and environmentally sound manner in accordance with 4VAC25-130-816.13 through 4VAC25-130-816.15. With the prior approval of the division, wells may be transferred to another party, or retained by the permittee for further use. At a minimum, the conditions of such transfer shall comply with State and local law and the permittee shall remain responsible for the proper management of the well until bond release in accordance with 4VAC25-130-816.13 through 4VAC25-130-816.15.

(h) Water rights and replacement. Any person who conducts surface mining activities shall replace the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source, where the water supply has been adversely impacted by contamination, diminution, or interruption proximately resulting from the surface mining activities. Baseline hydrologic information required in 4VAC25-130-780.21 and 4VAC25-130-780.22 shall be used in the determination of the extent of the impact of mining upon ground water and surface water.

(i) Discharges into an underground mine.

(1) Discharges into an underground mine are prohibited, unless specifically approved by the division after a demonstration that the discharge will--

(i) Minimize disturbance to the hydrologic balance on the permit area, prevent material damage outside the permit area and otherwise eliminate public hazards resulting from surface mining activities;

(ii) Not result in a violation of applicable water quality standards or effluent limitations.

(iii) Be at a known rate and quality which shall meet the effluent limitations of 4VAC25-130-816.42 for pH and total suspended solids, except that the pH and total suspended solids limitations may be exceeded, if approved by the division; and

(iv) Meet the approval of the Mine Safety and Health Administration.

(2) Discharges shall be limited to the following:

(i) Water;

(ii) Coal processing waste;

(iii) Fly ash from a coal-fired facility;

(iv) Sludge from an acid-mine drainage treatment facility;

(v) Flue-gas desulfurization sludge;

(vi) Inert materials used for stabilizing underground mines; and

(vii) Underground mine development wastes.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.41, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-816.42. Hydrologic balance; water quality standards and effluent limitations.

Discharges of water from areas disturbed by surface mining activities shall be made in compliance with all applicable State and Federal water quality laws, standards and regulations and with the effluent limitations for coal mining promulgated by the U.S. Environmental Protection Agency set forth in 40 CFR 434.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.42, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-816.43. Diversions.

(a) General requirements.

(1) With the approval of the division, any flow from mined areas abandoned before May 3, 1978, and any flow from undisturbed areas or reclaimed areas, after meeting the criteria of 4VAC25-130-816.46 for siltation structure removal, may be diverted from disturbed areas by means of temporary or permanent diversions. All diversions shall be designed to minimize adverse impacts to the hydrologic balance within the permit and adjacent areas, to prevent material damage outside the permit area and to assure the safety of the public. Diversions shall not be used to divert water into underground mines without approval of the division under 4VAC25-130-816.41(i).

(2) The diversion and its appurtenant structures shall be designed, located, constructed, maintained, and used to--

(i) Be stable;

(ii) Provide protection against flooding and resultant damage to life and property;

(iii) Prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow outside the permit area; and

(iv) Comply with all applicable local, State and Federal laws and regulations.

(3) Temporary diversions shall be removed promptly when no longer needed to achieve the purpose for which they were authorized. The land disturbed by the removal process shall be restored in accordance with this Part. Before diversions are removed, downstream water-treatment facilities previously protected by the diversion shall be modified or removed, as necessary, to prevent overtopping or failure of the facilities. This requirement shall not relieve the permittee from maintaining water-treatment facilities as otherwise required. A permanent diversion or a stream channel reclaimed after the removal of a temporary diversion shall be designed and constructed so as to restore or approximate the premining characteristics of the original stream channel including the natural riparian vegetation to promote the recovery and the enhancement of the aquatic habitat.

(4) Diversions which convey water continuously or frequently shall be designed by a qualified registered professional engineer and constructed to ensure stability and compliance with the standards of this Part and any other criteria set by the division.

(5) Channel side slopes shall be no steeper than 1.5h:1v in soil.

(6) Adequate freeboard shall be provided to prevent overtopping. A minimum of 0.3 feet shall be included, with additional freeboard provided at curves, transitions, and other critical sections as required.

(7) When rock rip rap lining is used, consideration shall be given to rip rap size, bedding, and filter material. Rock used for rip rap shall be non-degradable, and non-acid forming such as natural sand and gravel, sandstone or limestone. No clay, shale, or coal shall be used.

(8) Sediment and other debris shall be removed and the diversion maintained to provide the

design requirements throughout its operation.

(9) The division may specify other criteria for diversions to meet the requirements of this section.

(b) Diversion of perennial and intermittent streams.

(1) Diversion of perennial and intermittent streams within the permit area may be approved by the division after making the finding relating to stream buffer zones called for in 4VAC25-130-816.57 that the diversion will not adversely affect the water quantity and quality and related environmental resources of the stream.

(2) The design capacity of channels for temporary and permanent stream channel diversions shall be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream from the diversion.

(3) The requirements of Paragraph (a)(2)(ii) of this section shall be met when the temporary and permanent diversions for perennial and intermittent streams are designed so that the combination of channel, bank and flood-plain configuration is adequate to pass safely the peak runoff of a 10-year, 6-hour precipitation event for a temporary diversion and a 100-year, 6-hour precipitation event for a permanent diversion.

(4) The design and construction of all stream channel diversions of perennial and intermittent streams shall be certified by a qualified registered professional engineer as meeting the standards of this Part and any other criteria set by the division.

(5) Channels which are constructed in backfilled material shall be formed during the backfilling and grading of the area. Unless the backfill material is of sufficiently low permeability, the channel shall be lined to prevent saturation of the backfill, loss of stream flow, or degradation of groundwater quality.

(6) Rock rip rap lining shall be placed in the channels of all diversions of perennial and intermittent streams to the normal flow depth, including adequate freeboard. Channels constructed in competent bedrock need not be rip rap lined.

(c) Diversion of miscellaneous flows.

(1) Miscellaneous flows, which consist of all flows except for perennial and intermittent streams, may be diverted away from disturbed areas if required or approved by the division. Miscellaneous flows shall include ground-water discharges and ephemeral streams.

(2) The design, location, construction, maintenance, and removal of diversions of miscellaneous flows shall meet all of the performance standards set forth in Paragraph (a) of this section.

(3) The requirements of Paragraph (a)(2)(ii) of this section shall be met when the temporary and permanent diversions for miscellaneous flows are designed to pass safely the peak runoff of a 2-year, 6-hour precipitation event for a temporary diversion and a 10-year, 6-hour precipitation event for a permanent diversion.

(d) Steep slope conveyances.

(1) A steep slope conveyance, including but not limited to a rock rip rap flume, concrete flume, or a pipe, shall be used to convey water down steep slopes to stable natural or constructed drainways. Steep slope conveyances shall be constructed at locations where concentrated flows may cause erosion.

(2) The capacity of the conveyance shall be equal to or greater than the capacity of the inlet ditch or drainage structure associated with it.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.43, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 25, Issue 12, eff. March 18, 2009.

4VAC25-130-816.45. Hydrologic balance; sediment control measures.

(a) Appropriate sediment control measures shall be designed, constructed, and maintained using the best technology currently available to:

- (1) Prevent, to the extent possible, additional contributions of sediment to streamflow or to runoff outside the permit area,
- (2) Meet the more stringent of applicable State or Federal effluent limitations,
- (3) Minimize erosion to the extent possible.

(b) Sediment control measures include practices carried out within and adjacent to the disturbed area. The sedimentation storage capacity of practices in and downstream from the disturbed area shall reflect the degree to which successful mining and reclamation techniques are applied to reduce erosion and control sediment. Sediment control measures consist of the utilization of proper mining and reclamation methods and sediment control practices, singly or in combination. Sediment control methods include but are not limited to-

- (1) Disturbing the smallest practicable area at any one time during the mining operation through progressive backfilling, grading, and prompt revegetation as required in 4VAC25-130-816.111(b);
- (2) Stabilizing the backfill material to promote a reduction in the rate and volume of runoff, in accordance with the requirements of 4VAC25-130-816.102;
- (3) Retaining sediment within disturbed areas;
- (4) Diverting runoff away from disturbed areas;
- (5) Diverting runoff using protected channels or pipes through disturbed areas so as not to

cause additional erosion;

(6) Using straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment; and

(7) Treating with chemicals.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.45, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-816.46. Hydrologic balance; siltation structures.

(a) For the purposes of this section only, "disturbed area" shall not include those areas—

(1) In which the only surface mining activities include diversion ditches, siltation structures, or roads that are designed, constructed and maintained in accordance with this Part; and

(2) For which the upstream area is not otherwise disturbed by the operator.

(b) General requirements.

(1) Additional contributions of sediment to streamflow or runoff outside the permit area shall be prevented to the extent possible using the best technology currently available.

(2) All surface drainage from the disturbed area shall be passed through a siltation structure before leaving the permit area, except as provided in paragraph (b)(5) or (e) of this section.

(3) Siltation structures for an area shall be constructed before beginning any surface mining activities in that area and, upon construction, shall be certified by a qualified registered professional engineer to be constructed as designed and as approved in the reclamation plan.

(4) Any siltation structure which impounds water shall be designed, constructed and maintained in accordance with 4VAC25-130-816.49.

(5) Siltation structures shall be maintained until removal is authorized by the division and the disturbed area has been stabilized and revegetated. In no case shall the structure be removed sooner than two years after the last augmented seeding.

(6) When a siltation structure is removed, any embankment material and all accumulated sediment shall be placed in designated disposal areas, and the land on which the siltation structure was located shall be regraded and revegetated in accordance with the reclamation plan and 4VAC25-130-816.111 through 4VAC25-130-816.116. Sedimentation ponds approved by the division for retention as permanent impoundments may be exempted from this

requirement.

(c) Sedimentation ponds.

(1) When used, sedimentation ponds shall—

(i) Be used individually or in series;

(ii) Be located as near as possible to the disturbed area and out of perennial streams unless such location is approved by the division; and

(iii) Be designed, constructed, and maintained to—

(A) Provide adequate sediment storage volume and provide adequate detention time to allow the effluent from the ponds to meet state and federal effluent limitations;

(B) Have a minimum volume of 0.125 acre-feet per acre of disturbed area draining to it, of which 0.075 acre-feet per acre disturbed shall be sediment storage volume and the remainder shall be detention storage volume;

(C) Treat the 10-year, 24-hour precipitation event ("design event") unless a lesser design event is approved by the division based on terrain, climate, other site-specific conditions and on a demonstration by the permittee that the effluent limitations of 4VAC25-130-816.42 will be met;

(D) Provide a nonclogging dewatering device adequate to maintain the detention time required under paragraphs (c)(1)(iii)(A) and (B) of this section;

(E) Minimize, to the extent possible, short circuiting;

(F) Provide periodic sediment removal sufficient to maintain adequate volume for the design event. The elevation corresponding to the sediment storage volume shall be determined and a bench mark set in the field from which this elevation can readily be established. Sediment shall be removed when its accumulation reaches the cleanout level or more frequently if the operation of the structure is impaired. Sediment removed shall be placed only in disposal areas identified and approved in the reclamation plan;

(G) Ensure against excessive settlement;

(H) Be free of sod, large roots, frozen soil, and acid or toxic-forming coal-processing waste; and

(I) Be compacted properly.

(2) Spillways. A sedimentation pond shall include either a combination of principal and emergency spillways or a single spillway configured as specified in 4VAC25-130-816.49(a)(9).

(d) Other treatment facilities.

(1) Other treatment facilities shall be designed to treat the 10-year, 24-hour precipitation event unless a lesser design event is approved by the division based on terrain, climate, other site-specific conditions and a demonstration by the permittee that the effluent limitations of

4VAC25-130-816.42 will be met.

(2) Other treatment facilities shall be designed in accordance with the applicable requirements of paragraph (c) of this section.

(e) Exemptions. Exemptions to the requirements of this section may be granted if—

(1) The disturbed drainage area within the total disturbed area is small; and

(2) The permittee demonstrates that siltation structures and alternate sediment control measures are not necessary for drainage from the disturbed area to meet the effluent limitations under 4VAC25-130-816.42 and the applicable state and federal water quality standards for the receiving waters.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.46, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 15, Issue 6, eff. January 6, 1999.

4VAC25-130-816.47. Hydrologic balance; discharge structures.

Discharge from sedimentation ponds, permanent and temporary impoundments, coal processing waste dams and embankments, and diversions shall be controlled, by energy dissipators, riprap channels, and other devices, where necessary, to reduce erosion, to prevent deepening or enlargement of stream channels, and to minimize disturbance of the hydrologic balance. Discharge structures shall be designed according to standard engineering-design procedures.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.47, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-816.49. Impoundments.

(a) General requirements. The requirements of this subsection apply to both temporary and permanent impoundments.

(1) Impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210-VI-TR60, Oct. 1985),

"Earth Dams and Reservoirs," shall comply with the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60 and the requirements of this section. The technical release is hereby incorporated by reference. Copies may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, Order No. PB87-157509/AS. Copies can be inspected at the OSM Headquarters Office, Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 660, 800 North Capitol Street, Washington, D.C., or at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, D.C.

(2) An impoundment meeting the size or other criteria of 30 CFR 77.216(a) shall comply with the requirements of 30 CFR 77.216 and this section.

(3) Design certification. The design of impoundments shall be certified by a qualified registered professional engineer as designed to meet the requirements of this Part using current, prudent engineering practices, and any other criteria established by the division. The qualified registered professional engineer shall be experienced in the design and construction of impoundments.

(4) Stability.

(i) An impoundment meeting the Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a) shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2.

(ii) Impoundments not included in paragraph (a)(4)(i) of this section, except for a coal mine waste impounding structure shall have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions. In lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3, earth embankments whose top widths are no less than 10 feet and whose embankment slopes are 2h:1v or flatter may be used provided that the permittee documents that a minimum static safety factor of 1.3 can be met using the graphical solution methods outlined in the "Bureau of Mines Report of Investigations/1981, RI 8564, Factor of Safety Charts for Estimating the Stability of Saturated and Unsaturated Tailings Pond Embankments, United States Department of Interior."

(5) Freeboard. Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. The minimum freeboard shall be one foot. Impoundments meeting the Class B or C criteria for dams in TR-60 shall comply with the freeboard hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60.

(6) Foundation.

(i) Foundations and abutments for an impounding structure shall be stable during all phases of construction and operation and shall be designed based on adequate and

accurate information on the foundation conditions. For an impoundment meeting the Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a), foundation investigations, as well as any necessary laboratory testing of foundation material shall be performed to determine the design requirements for foundation stability.

(ii) All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability and minimize seepage. The pool area shall be cleared of all brush and trees unless the requirement is waived by the division.

(iii) The most impervious material available shall be used in the cutoff trench and center portion of the dam. If sandy or gravelly material is encountered, it shall be placed in the outer shell, preferably in the downstream portion of the dam.

(7) Slope protection. Slope protection shall be provided to protect against surface erosion at the site and protect against sudden drawdown.

(8) Vegetation. Faces of embankments and surrounding areas shall be vegetated, except that faces where water is impounded may be riprapped or otherwise stabilized in accordance with accepted design practices.

(9) Spillways. An impoundment shall include either a combination of principal and emergency spillways or a single spillway configured as specified in paragraph (a)(9)(i) of this section, designed and constructed to safely pass the applicable design precipitation event specified in paragraph (a)(9)(ii) of this section, except as set forth in paragraph (c)(2) of this section.

(i) (A) The division may approve a single open-channel spillway that is:

(1) Of nonerodible construction and designed to carry sustained flows; or

(2) Earth- or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

(B) Temporary ponds that do not meet the size or other criteria of 30 CFR 77.216(a) and located where failure would not be expected to cause loss of life or serious property damage, may use a single spillway of the pipe and riser design if the riser is no less than 15 inches in diameter, the barrel is no less than 12 inches in diameter, and a properly designed anti-vortex device and trash rack are securely installed on top of the riser.

(ii) Except as specified in paragraph (c)(2) of this section, the required design precipitation event for an impoundment meeting the spillway requirements of paragraph (a)(9) of this section is:

(A) For an impoundment meeting the SCS Class B or C criteria for dams in TR-60, the emergency spillway hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60 or greater event as specified by the division.

(B) For an impoundment meeting or exceeding the size or other criteria of 30 CFR

77.216(a), a 100-year six-hour event, or greater event as specified by the division.

(C) For an impoundment included in paragraphs (a)(9(ii)(A) and (B) of this section, a 25-year six-hour event, or greater event as specified by the division.

(10) Inspections. A qualified registered professional engineer or other qualified professional specialist under the direction of a professional engineer, shall inspect each impoundment as provided in paragraph (a)(10)(i) of this section. The professional engineer or specialist shall be experienced in the construction of impoundments.

(i) Inspections shall be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.

(ii) The qualified registered professional engineer shall, within two weeks after each inspection required in paragraph (a)(10)(i) of this section, provide to the division a certified report that the impoundment has been constructed and/or maintained as designed and in accordance with the approved plan and this chapter. Construction certified in previous reports need not be recertified after each annual inspection. The report shall include discussion of any appearance of instability, structural weakness or other hazardous condition, depth and elevation of any impounded waters, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability.

(iii) A copy of the report shall be retained at or near the minesite.

(11) Examinations. Impoundments meeting the SCS Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216 must be examined in accordance with 30 CFR 77.216-3. Impoundments not meeting the Class B or C criteria for dams in TR-60, or subject to 30 CFR 77.216 shall be examined at least quarterly. A qualified person designated by the operator shall examine impoundments for appearance of structural weakness and other hazardous conditions.

(12) Emergency procedures. If any examination or inspection discloses that a potential hazard exists, the permittee shall promptly inform the division of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the division shall be notified immediately.

Notification shall be by the fastest available means and followed in writing. The division shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

(b) Permanent impoundments. A permanent impoundment of water may be created, if authorized by the division in the approved permit based upon the following demonstration:

(1) The size and configuration of such impoundment will be adequate for its intended purposes.

(2) The quality of impounded water will be suitable on a permanent basis for its intended use

and, after reclamation, will meet applicable state and federal water quality standards, and discharges from the impoundment will meet applicable effluent limitations and will not degrade the quality of receiving water below applicable state and federal water quality standards.

(3) The water level will be sufficiently stable and be capable of supporting the intended use.

(4) Final grading will provide for adequate safety and access for proposed water users.

(5) The impoundment will not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(6) The impoundment will be suitable for the approved postmining land use.

(c) Temporary impoundments.

(1) The division may authorize the construction of temporary impoundments as part of a surface coal mining operation.

(2) In lieu of meeting the requirements in paragraph (a)(9)(i) of this section, the division may approve an impoundment that relies primarily on storage to control the runoff from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer or qualified registered professional land surveyor in accordance with 4VAC25-130-780.25(a) that the impoundment will safely control the design precipitation event, the water from which shall be safely removed in accordance with current, prudent, engineering practices. Such an impoundment shall be located where failure would not be expected to cause loss of life or serious property damage, except where:

(i) Impoundments meeting the SCS Class B or C criteria for dams in TR-60 or the size or other criteria of 30 CFR 77.216(a), shall be designed to control the precipitation of the probable maximum precipitation of a six-hour event, or greater event as specified by the division; or

(ii) Impoundments not included in paragraph (c)(2)(i) of this section shall be designed to control the precipitation of a 100-year six-hour event, or greater event as specified by the division.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.49, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 12, Issue 2, eff. November 15, 1995; Volume 15, Issue 6, eff. January 6, 1999.

4VAC25-130-816.56. Postmining rehabilitation of sedimentation ponds, diversions, impoundments, and treatment facilities.

Before abandoning a permit area or seeking bond release, the permittee shall ensure that all temporary structures are removed and reclaimed, and that all permanent sedimentation ponds, diversions, impoundments, and treatment facilities meet the requirements of this chapter for permanent structures, have been maintained properly, and meet the requirements of the approved reclamation plan for permanent structures and impoundments. The permittee shall renovate such structures if necessary to meet the requirements of this chapter and to conform to the approved reclamation plan.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.56, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-816.57. Hydrologic balance; stream buffer zones.

(a) No land within 100 feet of a perennial stream or an intermittent stream shall be disturbed by surface mining activities, unless the division specifically authorizes surface mining activities closer to, or through, such a stream. The division may authorize such activities only upon finding that-

(1) Surface mining activities will not cause or contribute to the violation of applicable State or Federal water quality standards, and will not adversely affect the water quantity and quality or other environmental resources of the stream; and

(2) If there will be a temporary or permanent stream-channel diversion, it will comply with 4VAC25-130-816.43.

(b) The area not to be disturbed shall be designated as a buffer zone, and the permittee shall mark it as specified in 4VAC25-130-816.11.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.57, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-816.59. Coal recovery.

Surface mining activities shall be conducted so as to maximize the utilization and conservation of the coal, while utilizing the best appropriate technology currently available to maintain environmental integrity, so that re-affecting the land in the future through surface coal mining operations is minimized.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.59, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-816.61. Use of explosives; general requirements.

(a) Compliance with other laws. Each permittee shall comply with all applicable State and Federal laws and regulations in the use of explosives.

(b) Blasting schedule. Blasts that use more than five pounds of explosive or blasting agent shall be conducted according to the schedule required under 4VAC25-130-816.64.

(c) Blasters.

(1) All blasting operations in the State shall be conducted under the direction of a certified blaster certified in accordance with Part 850.

(2) Certificates of blaster certification shall be carried by blasters or shall be on file at the permit area during blasting operations.

(3) A blaster and at least one other person shall be present at the firing of a blast.

(4) Persons responsible for blasting operations at a blasting site shall be familiar with the blasting plan and site-specific performance standards.

(d) Blast design.

(1) An anticipated blast design shall be submitted if blasting operations will be conducted within-

(i) 1,000 feet of any building used as a dwelling, public building, school, church, or community or institutional building outside the permit area; or

(ii) 500 feet of an active or abandoned underground mine.

(2) The blast design may be presented as part of a permit application or at a time, before the blast, proposed in the application and approved by the division.

(3) The blast design shall contain sketches of the drill patterns, delay periods, and decking and shall indicate the type and amount of explosives to be used, critical dimensions, and the

location and general description of structures to be protected, as well as a discussion of design factors to be used, which protect the public and meet the applicable airblast, flyrock, and ground-vibration standards in 4VAC25-130-816.67.

(4) The blast design shall be prepared and signed by a certified blaster.

(5) The division may require changes to the design submitted.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.61, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-816.62. Use of explosives; preblasting survey.

(a) At least 30 days before initiation of blasting, the permittee shall notify, in writing, all residents or owners of dwellings or other structures located within 1/2 mile of the permit area how to request a preblasting survey.

(b) A resident or owner of a dwelling or structure within 1/2 mile of any part of the permit area may request a preblasting survey. This request shall be made, in writing, directly to the permittee or to the division, who shall promptly notify the permittee. The permittee shall promptly conduct a preblasting survey of the dwelling or structure and promptly prepare a written report of the survey. An updated survey of any additions, modifications, or renovations shall be performed by the permittee if requested by the resident or owner. The request for an updated survey shall be in writing and describe the additions, modifications, or renovations which are to be surveyed.

(c) The permittee shall determine the condition of the dwelling or structure and shall document any preblasting damage and other physical factors that could reasonably be affected by the blasting. Structures such as pipelines, cables, transmission lines, and cisterns, wells, and other water systems warrant special attention; however, the assessment of these structures may be limited to surface conditions and other readily available data.

(d) The written report of the survey shall be signed by the person who conducted the survey. Copies of the report shall be promptly provided to the division and to the person requesting the survey. If the person requesting the survey disagrees with the contents and/or recommendations contained therein, he may submit to both the permittee and the division a detailed description of the specific areas of disagreement.

(e) Any surveys requested more than 10 days before the planned initiation of blasting shall be completed by the permittee before the initiation of blasting. Any surveys requested after permit approval but less than 10 days before the planned initiation of blasting shall be completed by the permittee within 30 days of the request, except that reasonable time extensions may be approved by the division.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.62, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-816.64. Use of explosives; blasting schedule.

(a) General requirements.

- (1) The permittee shall conduct blasting operations at times approved by the division and announced in the blasting schedule. The division may limit the area covered, timing, and sequence of blasting as listed in the schedule, if such limitations are necessary and reasonable in order to protect the public health and safety or welfare.
- (2) All blasting shall be conducted during daylight hours. The division may specify more restrictive time periods for blasting.
- (3) Unscheduled blasts may be conducted only where public or permittee health and safety so require and for emergency blasting actions. When a permittee conducts an unscheduled blast, the permittee, using audible signals, shall notify residents within 1/2 mile of the blasting site and document the reason for the unscheduled blast in accordance with 4VAC25-130-816.68(p).
- (4) Seismic monitoring shall be conducted when blasting operations on coal surface mining operations are conducted within 1,000 feet of a private dwelling or other occupied building.

(b) Blasting schedule publication and distribution.

- (1) The permittee shall publish the blasting schedule in a newspaper of general circulation in the locality of the blasting site at least 10 days, but not more than 30 days, before beginning a blasting program.
- (2) The permittee shall distribute copies of the schedule to local governments and public utilities and to each local residence within 1/2 mile of the proposed blasting site described in the schedule.
- (3) The permittee shall republish and redistribute the schedule at least every 12 months and revise and republish the schedule at least 10 days, but not more than 30 days, before blasting whenever the area covered by the schedule changes or actual time periods for blasting significantly differ from the prior announcement.

(c) Blasting schedule contents. The blasting schedule shall contain, at a minimum-

- (1) Name, address, and telephone number of the permittee;
- (2) Identification of the specific areas in which blasting will take place;
- (3) Dates and time periods when explosives are to be detonated;
- (4) Methods to be used to control access to the blasting area; and

(5) Type and patterns of audible warning and all-clear signals to be used before and after blasting.

Statutory Authority

§§ 45.1-161.3, 45.1-230 and 45.1-242 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.64, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 22, Issue 24, eff. September 6, 2006.

4VAC25-130-816.66. Use of explosives; blasting signs, warnings, and access control.

(a) Blasting signs. Blasting signs shall meet the specifications of 4VAC25-130-816.11.

(b) Warnings. Warning and all-clear signals of different character or pattern that are audible within a range of ½ mile from the point of the blast shall be given. Each person within the permit area and each person who resides or regularly works within ½ mile of the permit area shall be notified of the meaning of the signals in the blasting schedule.

(c) Access control. Access within the blasting area shall be controlled to prevent presence of livestock or unauthorized persons during blasting and until an authorized representative of the permittee has reasonably determined that-

- (1) No unusual hazards, such as imminent slides or undetonated charges, exist; and
- (2) Access to and travel within the blasting area can be safely resumed.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.66, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-816.67. Use of explosives; control of adverse effects.

(a) General requirements. Blasting shall be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of surface or ground water outside the permit area.

(b) Airblast.

- (1) Limits.

(i) Airblast shall not exceed the maximum limits listed below at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area, except as provided in Paragraph (e) of this section.

Lower frequency limit of measuring system, in Hz (± 3 dB)	Maximum level, in dB
0.1 Hz or lower - flat response ¹	134 peak
2 Hz or lower - flat response	133 peak
6 Hz or lower - flat response	129 peak
C-weighted-slow response ¹	105 peak dBC

¹Only when approved by the division

(ii) If necessary to prevent damage, the division shall specify lower maximum allowable airblast levels than those of Paragraph (b)(1)(i) of this section for use in the vicinity of a specific blasting operation.

(2) Monitoring.

(i) The permittee shall conduct periodic monitoring to ensure compliance with the airblast standards. The division may require airblast measurement of any or all blasts and may specify the locations at which such measurements are taken.

(ii) The measuring systems shall have an upper-end flat-frequency response of at least 200 Hz.

(c) Flyrock. Flyrock travelling in the air or along the ground shall not be cast from the blasting site-

- (1) More than one-half the distance to the nearest dwelling or other occupied structure;
- (2) Beyond the area of control required under 4VAC25-130-816.66(c); or
- (3) Beyond the permit boundary.

(d) Ground vibration.

(1) General. In all blasting operations, except as otherwise authorized in Paragraph (e) of this section, the maximum ground vibration shall not exceed the values approved in the blasting plan required under 4VAC25-130-780.13. The maximum ground vibration for protected structures listed in Paragraph (d)(2)(i) of this section shall be established in accordance with either the maximum peak-particle-velocity limits of Paragraph (d)(2), the scaled distance equation of Paragraph (d)(3), the blasting-level chart of Paragraph (d)(4), or by the division under Paragraph (d)(5) of this section. All structures in the vicinity of the blasting area, not listed in Paragraph (d)(2)(i) of this section, such as water towers, pipelines and other utilities, tunnels, dams, impoundments, and underground mines, shall be protected from damage by

establishment of a maximum allowable limit on the ground vibration, submitted by the permittee in the blasting plan and approved by the division.

(2) Maximum peak particle velocity.

(i) The maximum ground vibration shall not exceed the following limits at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area:

Distance (D), from the blasting site, in feet	Maximum allowable peak particle velocity (Vmax) for ground vibration, in inches/second ¹	Scaled distance factor to be applied without seismic monitoring ² (Ds)
0 to 300	1.25	50
301 to 5,000	1.00	55
5,001 and beyond	0.75	65

¹Ground vibration shall be measured as the particle velocity. Particle velocity shall be recorded in three mutually perpendicular directions. The maximum allowable peak particle velocity shall apply to each of the three measurements.

²Applicable to the scaled-distance equation of Paragraph (d)(3)(i) of this section

(ii) A seismographic record shall be provided for each blast.

(3) Scale-distance equation.

(i) The permittee may use the scaled distance equation, $W=(D/Ds)^2$, to determine the allowable charge weight of explosives to be detonated in any 8-millisecond period, without seismic monitoring; where W=the maximum weight of explosives, in pounds; D=the distance, in feet, from the blasting site to the nearest protected structure; and Ds=the scaled-distance factor, which may initially be approved by the division using the values for scaled-distance factor listed in Paragraph (d)(2)(i) of this section.

(ii) The development of a modified scaled-distance factor may be authorized by the division on receipt of a written request by the permittee, supported by seismographic records of blasting at the minesite. The modified scaled-distance factor shall be determined such that the particle velocity of the predicted ground vibration will not exceed the prescribed maximum allowable peak particle velocity of Paragraph (d)(2)(i) of this section, at a 95-percent confidence level.

(4) Blasting-level chart.

(i) The permittee may use the ground-vibration limits in Figure 1 to determine the maximum allowable ground vibration.

(ii) If the Figure 1 limits are used, a seismographic record including both particle velocity and vibration-frequency levels shall be provided for each blast. The method for the analysis of the predominant frequency contained in the blasting records shall be approved by the division before application of this alternative blasting criterion.

(5) The maximum allowable ground vibration shall be reduced by the division below the limits otherwise provided by this section, if determined necessary to provide damage protection.

(6) The division may require the permittee to conduct seismic monitoring of any or all blasts or may specify the location at which the measurements are taken and the degree of detail necessary in the measurement.

(e) The maximum airblast and ground-vibration standards of Paragraphs (b) and (d) of this section shall not apply at the following locations:

(1) At structures owned by the permittee and not leased to another person.

(2) At structures owned by the permittee and leased to another person, if a written waiver by the lessee is submitted to the division before blasting.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.67, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-816.68. Use of explosives; records of blasting operations.

The permittee shall retain a record of all blasts for at least three years. Upon request, copies of these records shall be made available to the division and to the public for inspection. Such records shall contain the following data:

(a) Name of the permittee conducting the blast.

(b) Location, date, and time of the blast.

(c) Name, signature, and certification number of the blaster conducting the blast.

(d) Identification, direction, and distance, in feet, from the nearest blast hole to the nearest dwelling, public building, school, church, community or institutional building outside the permit area, except those described in 4VAC25-130-816.67(e).

(e) Weather conditions, including those which may cause possible adverse blasting effects.

(f) Type of material blasted.

(g) Sketches of the blast pattern including number of holes, burden, spacing, decks, and delay

pattern.

(h) Diameter and depth of holes.

(i) Types of explosives used.

(j) Total weight of explosives used per hole.

(k) The maximum weight of explosives detonated in an 8-millisecond period.

(l) Initiation system.

(m) Type and length of stemming.

(n) Mats or other protections used.

(o) Seismographic and airblast records, if required, which shall include-

(1) Type of instrument, sensitivity, and calibration signal or certification of annual calibration;

(2) Exact location of instrument and the date, time, and distance from the blast;

(3) Name of the person and firm taking the reading;

(4) Name of the person and firm analyzing the seismographic record; and

(5) The vibration and/or airblast level recorded.

(p) Reasons and conditions for each unscheduled blast.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.68, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-816.71. Disposal of excess spoil; general requirements.

(a) General. Excess spoil shall be placed in designated disposal areas within the permit area, in a controlled manner to-

(1) Minimize the adverse effects of leachate and surface water runoff from the fill on surface and ground waters;

(2) Ensure mass stability and prevent mass movement during and after construction; and

(3) Ensure that the final fill is suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use.

(b) Design certification.

(1) The fill and appurtenant structures shall be designed using current, prudent engineering practices and any criteria established by the division as necessary to achieve the standards of this Part. A qualified registered professional engineer experienced in the design of earth and rock fills shall certify the design of the fill and appurtenant structures.

(2) The fill shall be designed to attain a minimum long-term static safety factor of 1.5. The foundation and abutments of the fill must be stable under all conditions of construction.

(c) Location. The disposal area shall be located on the most moderately sloping and naturally stable areas available, as approved by the division, and shall be placed, where possible, upon or above a natural terrace, bench, or berm, if such placement provides additional stability and prevents mass movement.

(d) Foundation.

(1) Sufficient foundation investigations, as well as any necessary laboratory testing of foundation material, shall be performed in order to determine the design requirements for foundation stability. The analyses of foundation conditions shall take into consideration the effect of underground mine workings, if any, upon the stability of the fill and appurtenant structures.

(2) Where the slope in the disposal area is in excess of 2.8h:1v (36 percent), or such lesser slope as may be designated by the division based on local conditions, keyway cuts (excavations to stable bedrock) or rock toe buttresses shall be constructed to ensure stability of the fill. Where the toe of the spoil rests on a downslope, stability analyses shall be performed in accordance with 4VAC25-130-780.35(c) to determine the size of rock toe buttresses and keyway cuts.

(e) Placement of excess spoil.

(1) All vegetative and organic materials shall be removed from the disposal area prior to placement of the excess spoil. Topsoil shall be removed, segregated and stored or redistributed in accordance with 4VAC25-130-816.22. If approved by the division, organic material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation or increase the moisture retention of the soil.

(2) Excess spoil shall be transported and placed in a controlled manner in horizontal lifts not exceeding four feet in thickness; concurrently compacted as necessary to ensure mass stability and to prevent mass movement during and after construction; graded so that surface and subsurface drainage is compatible with the natural surroundings; and covered with topsoil or substitute material in accordance with 4VAC25-130-816.22. The division may approve a design which incorporates placement of excess spoil in horizontal lifts greater than four feet in thickness when it is demonstrated by the permittee and certified by a qualified registered professional engineer that the design will ensure the stability of the fill and will meet all other applicable requirements.

(3) The final configuration of the fill shall be suitable for the approved postmining land use.

Terraces may be constructed on the outslope of the fill if required for stability, control of erosion, to conserve soil moisture, or to facilitate the approved postmining land use. The grade of the outslope between terrace benches shall not be steeper than 2h:1v (50 percent). Terraces, if constructed, shall be no less than 20 feet in width and the vertical distance between terraces shall not exceed 50 feet. Terraces on the fill shall be graded with a minimum 3.0% grade toward the fill and a minimum 1.0% slope toward the drainage control system.

(4) No permanent impoundments are allowed on the completed fill. Small depressions may be allowed by the division if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation; and if they are not incompatible with the stability of the fill.

(5) Excess spoil that is acid- or toxic-forming or combustible shall be adequately covered with nonacid, nontoxic and noncombustible material, or treated, to control the impact on surface and ground water in accordance with 4VAC25-130-816.41, to prevent sustained combustion, and to minimize adverse effects on plant growth and the approved postmining land use.

(f) Drainage control.

(1) If the disposal area contains springs, natural or manmade water courses, or wet weather seeps, the fill design shall include diversions and underdrains as necessary to control erosion, prevent water infiltration into the fill, and ensure stability.

(2) Diversions shall comply with the requirements of 4VAC25-130-816.43.

(3) Underdrains shall consist of durable rock or pipe, be designed and constructed using current, prudent engineering practices and any criteria established by the division as necessary to achieve the standards of this Part. The underdrain system shall be designed to carry the anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area and shall be protected from piping and contamination by an adequate filter. Rock underdrains shall be constructed of durable, nonacid-, nontoxic-forming rock (e.g., natural sand and gravel, sandstone, limestone, or other durable rock) that does not slake in water or degrade to soil material, and which is free of coal, clay or other nondurable material. Perforated pipe underdrains shall be corrosion resistant and shall have characteristics consistent with the long-term life of the fill.

(g) Surface area stabilization. Slope protection shall be provided to minimize surface erosion at the site. All disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.

(h) Inspections. A qualified registered professional engineer, or other qualified professional specialist under the direction of the professional engineer, shall periodically inspect the fill during construction. The professional engineer and specialist shall be experienced in the construction of earth and rock fills.

(1) Such inspections shall be made at least quarterly throughout construction and during critical construction periods. Critical construction periods shall include at a minimum: (i) Foundation preparation, including the removal of all organic material and topsoil; (ii)

placement of under drains and protective filter systems; (iii) installation of final surface drainage systems; and (iv) the final graded and revegetated fill. Regular inspections by the engineer or specialist shall also be conducted during placement and compaction of fill materials.

(2) The qualified registered professional engineer shall provide a certified report to the division within two weeks after each inspection that the fill has been constructed and maintained as designed and in accordance with the approved plan and this chapter. The report shall include appearances of instability, structural weakness, and other hazardous conditions.

(3)(i) The certified report on the drainage system and protective filters shall include color photographs taken during and after construction, but before underdrains are covered with excess spoil. If the underdrain system is constructed in phases, each phase shall be certified separately.

(ii) Where excess durable rock spoil is placed in single or multiple lifts such that the underdrain system is constructed simultaneously with excess spoil placement by the natural segregation of dumped materials, in accordance with 4VAC25-130-816.73, color photographs shall be taken of the underdrain as the underdrain system is being formed.

(iii) The photographs accompanying each certified report shall be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site.

(4) A copy of each inspection report shall be retained at or near the mine site.

(i) Coal mine waste. Coal mine waste may be disposed of in excess spoil fills if approved by the division and, if such waste is-

(1) Placed in accordance with 4VAC25-130-816.83;

(2) Nontoxic and nonacid forming; and

(3) Of the proper characteristics to be consistent with the design stability of the fill.

(j) Underground disposal. Excess spoil may be disposed of in underground mine workings, but only in accordance with a plan approved by the division and MSHA under 4VAC25-130-784.25.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.71, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-816.72. Disposal of excess spoil; valley fills/head-of-hollow

fills.

Valley fills and head-of-hollow fills shall meet the requirements of 4VAC25-130-816.71 and the additional requirements of this section.

(a) Drainage control.

(1) The top surface of the completed fill shall be graded such that the final slope after settlement will be toward properly designed drainage channels. Uncontrolled surface drainage may not be directed over the outslope of the fill. The maximum slope of the top of the fill shall be 20h:1v (5.0%).

(2) Runoff from areas above the fill and runoff from the surface of the fill shall be diverted into stabilized diversion channels designed to meet the requirements of 4VAC25-130-816.43 and, in addition, to safely pass the runoff from a 100-year, 6-hour precipitation event. The appropriate surface drainage system shall be installed prior to placement of excess spoil in the fill area. Temporary diversions may be approved by the division for use during fill construction provided that erosion is minimized and no threat to the public or the environment results.

(3)(i) A subdrainage system, constructed in accordance with 4VAC25-130-816.71(f)(3), shall be installed along the natural drainage system, extending from the toe to the head of the fill. The division may approve a lesser distance provided the standards of 4VAC25-130-816.71(f)(3) are met. A system of lateral underdrains shall connect this core to each area of potential drainage or seepage in the disposal area.

(ii) A filter system to ensure the proper long-term functioning of the subdrainage system shall be designed and constructed using current, prudent engineering practices.

(iii) The minimum size of the main underdrain shall be:

Total Amount of Fill Material	Predominant Type of Fill	Minimum Size of Drain, in Feet	
		Width	Height
Less than 1,000,000 Cubic Yards	Sandstone	10	4
Do: Shale	16	8	More than 1,000,000 Cubic Yards
Sandstone	16	8	Do: Shale

(iv) No more than 10 percent of the rock used in the underdrains may be less than 12 inches in size and no single rock may be larger than 25 percent of the width of the drain.

(v) Alternatives to the minimum sizes may be approved by the division provided the alternative is shown to convey, using accepted engineering analyses, the maximum anticipated discharge, including an appropriate factor of safety.

(b) Rock-core chimney drains. A rock-core chimney drain may be used in a head-of-hollow fill, instead of the underdrain and surface diversion system normally required, as long as the fill is not located in an area containing intermittent or perennial streams. A rock-core chimney drain may be used in a valley fill if the fill does not exceed 250,000 cubic yards of material and upstream drainage is diverted around the fill. The alternative rock-core chimney drain system shall be incorporated into the design and construction of the fill as follows:

(1) The fill shall have, along the vertical projection of the main buried stream channel or rill, a vertical core of durable rock at least 16 feet thick which shall extend from the toe of the fill to the head of the fill, and from the base of the fill to the surface of the fill. A system of lateral rock underdrains shall connect this rock core to each area of potential drainage or seepage in the disposal area. The underdrain system and rock core shall be designed to carry the anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area. Rocks used in the rock core and underdrains shall meet the requirements of 4VAC25-130-816.71(f).

(2) A filter system to ensure the proper long-term functioning of the rock core shall be designed and constructed using current, prudent engineering practices.

(3) Grading may drain surface water away from the outslope of the fill and toward the rock core. In no case, however, may intermittent or perennial streams be diverted into the rock core. The maximum slope of the top of the fill shall be 33h:1v (3.0%). A drainage pocket may be maintained at the head of the fill during and after construction, to intercept surface runoff and discharge the runoff through or over the rock drain, if stability of the fill is not impaired. In no case shall this pocket or sump have a potential capacity for impounding more than 10,000 cubic feet of water. Terraces on the fill shall be graded with a minimum 3.0% grade toward the fill and a minimum 1.0% slope toward the rock core.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.72, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-816.73. Disposal of excess spoil; durable rock fills.

The division may approve the alternative method of disposal of excess durable rock spoil by gravity placement in single or multiple lifts, provided the following conditions are met:

(a) Except as provided in this section, the requirements of 4VAC25-130-816.71 are met.

(b) The excess spoil consists of at least 80 percent, by volume, durable nonacid-and nontoxic-forming rock (e.g., sandstone or limestone) that does not slake in water and will not degrade to soil material. Where used, noncemented clay shale, clay spoil, soil or other nondurable

excess spoil materials shall be mixed with excess durable rock spoil in a controlled manner such that no more than 20 percent of the fill volume, as determined by tests performed by a registered engineer and approved by the division, is not durable rock.

(c) A qualified registered professional engineer certifies that the design will ensure the stability of the fill and meet all other applicable requirements.

(d) The fill is designed to attain a minimum long-term static safety factor of 1.5, and an earthquake safety factor of 1.1.

(e) The underdrain system may be constructed simultaneously with excess spoil placement by the natural segregation of dumped materials, provided the resulting underdrain system is capable of carrying anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area and the other requirements for drainage control are met.

(f) Surface water runoff from areas adjacent to and above the fill is not allowed to flow onto the fill and is diverted into stabilized diversion channels designed to meet the requirements of 4VAC25-130-816.43 and to safely pass the runoff from a 100-year, 6-hour precipitation event. The appropriate surface drainage system shall be installed prior to placement of excess spoil in the fill area. Temporary diversions may be approved by the division for use during fill construction, provided that erosion is minimized and no threat to the public or the environment results.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.73, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-816.74. Disposal of excess spoil; preexisting benches.

(a) The division may approve the disposal of excess spoil through placement on preexisting benches if the affected portion of the preexisting bench is permitted and the standards set forth in 4VAC25-130-816.102(c), (e) through (h) and (j), and the requirements of this section are met.

(b) All vegetation and organic materials shall be removed from the affected portion of the preexisting bench prior to placement of the excess spoil. Any available topsoil on the bench shall be removed, stored, and distributed in accordance with 4VAC25-130-816.22. Substitute or supplemental materials may be used in accordance with 4VAC25-130-816.22(b).

(c) The fill shall be designed and constructed using current, prudent engineering practices. The design will be certified by a registered professional engineer. The spoil shall be placed on the solid portion of the bench in a controlled manner and concurrently compacted as necessary to attain a long term static safety factor of 1.3 for all portions of the fill. Any spoil deposited on any fill portion of the bench will be treated as excess spoil fill under 4VAC25-130-816.71.

- (d) The preexisting bench shall be backfilled and graded to—
- (1) Achieve the most moderate slope possible which does not exceed the angle of repose;
 - (2) Eliminate the highwall to the maximum extent technically practical;
 - (3) Minimize erosion and water pollution both on and off the site; and
 - (4) If the disposal area contains springs, natural, or manmade water courses, or wet weather seeps, the fill design shall include diversions and underdrains as necessary to control erosion, prevent water infiltration into the fill, and ensure stability.
- (e) All disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.
- (f) Permanent impoundments may not be constructed on preexisting benches backfilled with excess spoil under this regulation.
- (g) Final configuration of the backfill must be compatible with the natural drainage patterns and the surrounding area, and support the approved postmining land use.
- (h) Disposal of excess spoil from an upper actively mined bench to a lower preexisting bench by means of gravity transport may be approved by the division provided that—
- (1) The gravity transport courses are determined on a site specific basis by the permittee as part of the permit application and approved by the division to minimize hazards to health and safety and to ensure that damage will be minimized between the benches, outside the set course, and downslope of the lower bench should excess spoil accidentally move;
 - (2) All gravity transported excess spoil, including that excess spoil immediately below the gravity transport courses and any preexisting spoil that is disturbed, is rehandled and placed in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and to prevent mass movement, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings and to ensure a minimum long-term static safety factor of 1.3. Excess spoil on the bench prior to the current mining operation that is not disturbed need not be rehandled except where necessary to ensure stability of the fill;
 - (3) A safety berm is constructed on the solid portion of the lower bench prior to gravity transport of the excess spoil. Where there is insufficient material on the lower bench to construct a safety berm, only that amount of excess spoil necessary for the construction of the berm may be gravity transported to the lower bench prior to construction of the berm;
 - (4) Excess spoil shall not be allowed on the downslope below the upper bench except on designed gravity transport courses properly prepared according to 4VAC25-130-816.22. Upon completion of the fill, no excess spoil shall be allowed to remain on the designated gravity transport course between the two benches and each transport course shall be reclaimed in accordance with the requirements of this Part.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.74, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 15, Issue 6, eff. January 6, 1999.

4VAC25-130-816.75. Disposal of excess spoil; zoned concept.

The disposal of spoil under the zoned concept shall meet the requirements of 4VAC25-130-816.71 and the additional requirements of this section.

- (a) The fill and appurtenant structures shall be designed using current, prudent engineering practices, and certified by a qualified registered professional engineer experienced in the design of earth and rockfill embankments.
- (b) The fill shall be designed to attain a long-term minimum safety factor of 1.5 under static loading conditions and 1.1 under earthquake loading conditions.
- (c) All vegetative and organic materials and topsoil in the structural and nonstructural zones shall be removed from the disposal area prior to placement of excess spoil. Topsoil shall be removed, segregated and stored or redistributed in accordance with 4VAC25-130-816.22. If approved by the division, organic material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation, or increase the moisture retention of the soil.
- (d) Excess spoil shall be transported and placed in a specified controlled manner as follows:
 - (1) Structural zone. In the structural zone, spoil shall be placed in horizontal lifts and compacted to densities and strengths required to ensure mass stability and prevent mass movement. The lift thickness and gradational requirements of the spoil shall be consistent with the design parameters. The extent of this zone shall be based on accepted engineering analyses.
 - (2) Nonstructural zone. In the nonstructural zone, the spoil shall be placed in a controlled manner to avoid contamination of the internal drainage system and to ensure mass stability and prevent mass movement, to provide for the safety of persons on or near the fill, and to provide mass stability and prevent mass movement during construction. The extent of this zone shall be determined by accepted engineering analyses.

The temporary outside slope of the nonstructural zone shall not exceed the angle of repose and the height of the nonstructural zone shall be limited to a height determined not to pose an actual or probable hazard to property, public health and safety, or the environment in the event of failure during construction.
 - (3) The structural zone and the nonstructural zone shall be constructed as concurrently as practicable and the distance between the structural zone and the nonstructural zone shall be minimized to assure proper stability and control of the temporary fill slope.

(e) In addition to the inspection requirements of 4VAC25-130-816.71(h), regular inspections by the engineer or specialist shall be conducted during placement and compaction of fill materials in both the structural and non-structural zones.

(f) The design of the fill shall include an internal drainage system which will ensure continued free drainage of anticipated seepage from precipitation and from springs or wet weather seeps.

(1) Anticipated discharge from springs and seeps and due to precipitation shall be based on records and/or field investigations to determine seasonal variation. The design of the internal drainage system shall be based on the maximum anticipated discharge.

(2) Underdrains constructed of granular material shall consist of durable, nonacid-, nontoxic-forming material such as natural sand and gravel, sandstone, or other durable rock that does not slake in water or degrade to soil material, and which is free of coal, clay, shale, or other nondurable material.

(3) A filter system shall be included to insure proper functioning of the underdrain system. This filter shall be designed and constructed using current geotechnical engineering methods.

(4) In constructing the underdrains, no more than 10 percent of the rock shall be less than 12 inches in size and no single rock may be larger than 25 percent of the width of the drain.

(5) The drain size shall be designed to safely route the anticipated seepage flows. Minimum drain sizes shall be six feet wide and two feet high.

(6) Prior to placing the underdrain materials, all vegetation and topsoil shall be removed.

(7) The internal drainage system shall be designed to assure that the phreatic surface within the structural zone is controlled.

(8) The internal drainage system shall be designed to prevent channeling of surface runoff through the underdrains.

(g) Surface water runoff from the area above the fill shall be diverted away from the fill and into stabilized diversion channels designed to pass safely the runoff from a 100-year, 6-hour precipitation event or larger event specified by the division. Runoff from the fill surface shall be diverted to stabilized channels which will safely pass the runoff from a 100-year, 6-hour precipitation event. Diversion design shall comply with the requirements of 4VAC25-130-816.43. Temporary diversions may be approved by the division for use during fill construction, provided that erosion is minimized and no threat to the public or the environment results.

(h) The top surface of the fill and any terrace constructed shall be graded such that the final slope after settlement shall be toward properly designed drainage channels. The maximum

slope of the top of the fill shall be 20h:1v (5 percent). The vertical distance between terraces shall not exceed 50 feet.

(i) Drainage shall not be directed over the outslope of the fill unless it is in a channel properly designed to minimize infiltration into the fill and to safely pass the runoff from a 100-year, 6-hour precipitation event or larger event specified by the division.

(j) The outslope of the completed fill shall not exceed an overall slope of 1v:2h. The division may require a flatter slope.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.75, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-816.76. Disposal of excess spoil; incidental reclamation.

(a) The division, where environmental benefits will occur, may approve placement of spoil not needed to restore the approximate original contour of the land and reclaim land within the permit area in a manner consistent with the Act and this chapter on:

- (1) Another area under a permit issued pursuant to the Act, or
- (2) On abandoned mine lands under a contract for reclamation according to the AML Guidelines and approved by the Division of Mined Land Reclamation.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.76, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-816.79. Protection of underground mining.

No surface mining activities shall be conducted closer than 500 feet to any point of either an active or abandoned underground mine, except to the extent that-

- (a) The activities result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public; and
- (b)(1) The nature, timing, and sequence of the activities proposed to be conducted closer than 500 feet to an abandoned underground mine are approved by the division; and
- (2) The nature, timing, and sequence of the activities proposed to be conducted closer

than 500 feet to an active underground mine are jointly approved by the division, the Mine Safety and Health Administration, and the Virginia division of Mines.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.79, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-816.81. Coal mine waste; general requirements.

(a) General. All coal mine waste disposed of in an area other than the mine workings or excavations shall be placed in new or existing disposal areas within a permit area, which are approved by the division for this purpose. Coal mine waste shall be hauled or conveyed and placed for final placement in a controlled manner to—

- (1) Minimize adverse effects of leachate and surface-water runoff on surface and ground water quality and quantity;
- (2) Ensure mass stability and prevent mass movement during and after construction;
- (3) Ensure that the final disposal facility is suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use;
- (4) Not create a public hazard; and
- (5) Prevent combustion.

(b) Waste from other areas. Coal mine waste material from activities located outside a permit area may be disposed of in the permit area only if approved by the division. Approval shall be based upon a showing that such disposal will be in accordance with the standards of this section.

(c) Design certification.

- (1) The disposal facility shall be designed using current prudent engineering practices and any criteria established by the division as necessary to achieve the standards of this Part. A qualified registered professional engineer, experienced in the design of similar earth and waste structures, shall certify the design of the disposal facility.
- (2) The disposal facility shall be designed to attain a minimum long-term static safety factor of 1.5. The foundation and abutments must be stable under all conditions of construction.

(d) Foundation. Sufficient foundation investigations, as well as any necessary laboratory testing of foundation material, shall be performed in order to determine the design requirements for foundation stability. The analyses of the foundation conditions shall take into consideration the effect of underground mine workings, if any, upon the stability of the disposal facility.

(e) Emergency procedures. If any examination or inspection discloses that a potential hazard exists, the division shall be informed promptly of the finding and of the emergency procedures

formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the division shall be notified immediately. Notification shall be by the fastest available means and followed in writing. The division shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

(f) Underground disposal. Coal mine waste may be disposed of in underground mine workings, but only in accordance with a plan approved by the division and MSHA under 4VAC25-130-784.25.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.81, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 15, Issue 6, eff. January 6, 1999.

4VAC25-130-816.83. Coal mine waste; refuse piles.

Refuse piles shall meet the requirements of 4VAC25-130-816.81, the additional requirements of this section, and the requirements of 30 CFR 77.214 and 77.215.

(a) Drainage control.

(1) If the disposal area contains springs, natural or manmade water courses, or wet weather seeps, the design shall include diversions and underdrains as necessary to control erosion, prevent water infiltration into the disposal facility and ensure stability.

(2) Uncontrolled surface drainage may not be diverted over the outslope of the refuse pile. Runoff from the areas above the refuse pile and runoff from the surface of the refuse pile shall be diverted into stabilized diversion channels designed to meet the requirements of 4VAC25-130-816.43 to safely pass the runoff from a 100-year, 6-hour precipitation event. Runoff diverted from undisturbed areas need not be commingled with runoff from the surface of the refuse pile. The appropriate surface drainage system shall be installed prior to placement of coal mine waste in the disposal area.

(3) Underdrains shall comply with the requirements of 4VAC25-130-816.71(f)(3).

(b) Surface area stabilization. Slope protection shall be provided to minimize surface erosion at the site. All disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.

(c) Placement.

(1) All vegetative and organic materials shall be removed from the disposal area prior to placement of coal mine waste. Topsoil shall be removed, segregated, and stored or redistributed in accordance with 4VAC25-130-816.22. If approved by the division, organic material may be used as mulch, or may be included in the topsoil to control erosion,

promote growth of vegetation or increase the moisture retention of the soil.

(2) The final configuration of the refuse pile shall be suitable for the approved postmining land use. Terraces may be constructed on the outslope of the refuse pile if required for stability, control of erosion, conservation of soil moisture, or facilitation of the approved postmining land use. The grade of the outslope between terrace benches shall not be steeper than 2h:1v (50 percent). Terraces, if constructed, shall be no less than 20 feet in width and the vertical distance between terraces shall not exceed 50 feet. Terraces on the fill shall be graded with a minimum 3.0% grade toward the fill and a minimum 1.0% slope toward the drainage control system.

(3) No permanent impoundments shall be allowed on the completed refuse pile. Small depressions may be allowed by the division if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation, and if they are not incompatible with stability of the refuse pile.

(4) Following final grading of the refuse pile, the coal mine waste shall be covered with a minimum of four feet of the best available, nontoxic and noncombustible material, in a manner that does not impede drainage from the underdrains. The division may allow less than four feet of cover material based on physical and chemical analyses which show that the requirements of 4VAC25-130-816.111 through 4VAC25-130-816.116 will be met.

(d) Inspections. A qualified registered professional engineer, or other qualified professional specialist under the direction of the professional engineer, shall inspect the refuse pile during construction. The professional engineer and specialist shall be experienced in the construction of similar earth and waste structures.

(1) Such inspections shall be made at least quarterly throughout construction and during critical construction periods. Critical construction periods shall include at a minimum: (i) foundation preparation including the removal of all organic material and topsoil; (ii) placement of underdrains and protective filter systems; (iii) installation of final surface drainage systems; and (iv) the final graded and revegetated facility. Regular inspections by the engineer or specialist shall also be conducted during placement and compaction of coal mine waste materials. More frequent inspections shall be conducted if a danger of harm exists to the public health and safety or the environment. Inspections shall continue until the refuse pile has been finally graded and revegetated or until a later time as required by the division.

(2) The qualified registered professional engineer shall provide a certified report to the division within two weeks after each inspection that the refuse pile has been constructed and maintained as designed and in accordance with the approved plan and this chapter. The report shall include appearances of instability, structural weakness, and other hazardous conditions.

(3) The certified report on the drainage system and protective filters shall include color

photographs taken during and after construction, but before underdrains are covered with coal mine waste. If the underdrain system is constructed in phases, each phase shall be certified separately. The photographs accompanying each certified report shall be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site.

(4) A copy of each inspection report shall be retained at or near the minesite.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.83, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-816.84. Coal mine waste; impounding structures.

New and existing impounding structures constructed of coal mine waste or intended to impound coal mine waste shall meet the requirements of 4VAC25-130-816.81 and the additional requirements of this section.

(a) Coal mine waste shall not be used for construction of impounding structures unless it has been demonstrated to the division that the stability of such a structure conforms to the requirements of this Part and the use of coal mine waste will not have a detrimental effect on downstream water quality or the environment due to acid seepage through the impounding structure. The stability of the structure and the potential impact of acid mine seepage through the impounding structure shall be discussed in detail in the design plan submitted to the division in accordance with 4VAC25-130-780.25.

(b)(1) Each impounding structure constructed of coal mine waste or intended to impound coal mine waste shall be designed, constructed and maintained in accordance with 4VAC25-130-816.49(a) and (c). Such structures may not be retained permanently as part of the approved postmining land use.

(2) Each impounding structure constructed of coal mine waste or intended to impound coal mine waste that meets the criteria of 30 CFR 77.216(a) shall have sufficient spillway capacity to safely pass, adequate storage capacity to safely contain, or a combination of storage capacity and spillway capacity to safely control, the probable maximum precipitation of a 6-hour precipitation event, or greater event as specified by the division.

(c) Spillways and outlet works shall be designed to provide adequate protection against erosion and corrosion. Inlets shall be protected against blockage.

(d) Drainage control. Runoff from areas above the disposal facility or runoff from the surface of the facility that may cause instability or erosion of the impounding structure shall be

diverted into stabilized diversion channels designed to meet the requirements of 4VAC25-130-816.43 and designed to safely pass the runoff from a 100-year, 6-hour design precipitation event.

(e) Impounding structures constructed of or impounding coal mine waste shall be designed so that at least 90 percent of the water stored during the design precipitation event can be removed within a 10-day period.

(f) For an impounding structure constructed of or impounding coal mine waste, at least 90 percent of the water stored during the design precipitation event shall be removed within the 10-day period following the design precipitation event.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.84, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-816.87. Coal mine waste; burning and burned waste utilization.

(a) Coal mine waste fires shall be extinguished by the person who conducts the surface mining activities, in accordance with a plan approved by the division and the Mine Safety and Health Administration. The plan shall contain, at a minimum, provisions to ensure that only those persons authorized by the permittee, and who have an understanding of the procedures to be used, shall be involved in the extinguishing operations.

(b) No burning or burned coal mine waste shall be removed from a permitted disposal area without a removal plan approved by the division. Consideration shall be given to potential hazards to persons working or living in the vicinity of the structure.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.87, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-816.89. Disposal of noncoal mine wastes.

(a) Noncoal mine wastes including, but not limited to grease, lubricants, paints, flammable liquids, garbage, abandoned mining machinery, lumber and other combustible materials

generated during mining activities shall be placed and stored in a controlled manner in a designated portion of the permit area. Placement and storage shall ensure that leachate and surface runoff do not degrade surface or ground water, that fires are prevented, and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings.

(b) Final disposal of noncoal mine wastes shall be in a designated disposal site in the permit area or a state-approved solid waste disposal area. Disposal sites in the permit area shall be designed and constructed to ensure that leachate and drainage from the noncoal mine waste area does not degrade surface or underground water. Wastes shall be routinely compacted and covered to prevent combustion and wind-borne waste. When the disposal is completed, a minimum of two feet of soil cover shall be placed over the site, slopes stabilized, and revegetation accomplished in accordance with 4VAC25-130-816.111 through 4VAC25-130-816.116. Operation of the disposal site shall be conducted in accordance with all local, state and federal requirements.

(c) At no time shall any noncoal mine waste be deposited in a refuse pile or impounding structure, nor shall a noncoal mine waste disposal site be located within eight feet of any coal outcrop or coal storage area.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.89, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 15, Issue 6, eff. January 6, 1999.

4VAC25-130-816.95. Stabilization of surface areas.

(a) All exposed surface areas shall be protected and stabilized to effectively control erosion and air pollution attendant to erosion.

(b) Rills and gullies which form in areas that have been regraded and topsoiled and which either (1) disrupt the approved postmining land use or the reestablishment of the vegetative cover, or (2) cause or contribute to a violation of water quality standards for receiving streams shall be filled, regraded, or otherwise stabilized; topsoil shall be replaced; and the areas shall be reseeded or replanted.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.95, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-816.97. Protection of fish, wildlife, and related environmental values.

- (a) The permittee shall, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts on fish, wildlife, and related environmental values and shall achieve enhancement of such resources where practicable.
- (b) Endangered and threatened species. No surface mining activity shall be conducted which is likely to jeopardize the continued existence of endangered or threatened species listed by the United States Secretary of the Interior or which is likely to result in the destruction or adverse modification of designated critical habitats of such species in violation of the Endangered Species Act of 1973, as amended (16 USC § 1531 et seq.). The operator shall promptly report to the division any State or Federally listed endangered or threatened species within the permit area of which the operator becomes aware. Upon notification, the division shall consult with appropriate State and Federal fish and wildlife agencies and, after consultation, shall identify whether, and under what conditions, the operator may proceed.
- (c) Bald and golden eagles. No surface mining activity shall be conducted in a manner which would result in the unlawful taking of a bald or golden eagle, its nest, or any of its eggs. The permittee shall promptly report to the division any golden or bald eagle nest within the permit area of which the permittee becomes aware. Upon notification, the division shall consult with the U.S. Fish and Wildlife Service and also, where appropriate, the State fish and wildlife agency and, after consultation, shall identify whether, and under what conditions, the permittee may proceed.
- (d) Nothing in this chapter shall authorize the taking of an endangered or threatened species or a bald or golden eagle, its nest, or any of its eggs in violation of the Endangered Species Act of 1973, as amended, 16 USC § 1531 et seq., or the Bald Eagle Protection Act, as amended, 16 USC § 668 et seq.
- (e) Each permittee shall, to the extent possible using the best technology currently available--
- (1) Ensure that electric powerlines and other transmission facilities used for, or incidental to, surface mining activities on the permit area are designed and constructed to minimize electrocution hazards to raptors, except where the division determines that such requirements are unnecessary;
 - (2) Locate and operate haul and access roads so as to avoid or minimize impacts on important fish and wildlife species or other species protected by State or Federal law;
 - (3) Design fences, overland conveyors, and other potential barriers to permit passage for large mammals, except where the division determines that such requirements are unnecessary; and
 - (4) Fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials.
- (f) Wetlands and habitats of unusually high value for fish and wildlife. The permittee shall avoid disturbances to, enhance where practicable, restore, or replace, wetlands, and riparian vegetation along rivers and streams and bordering ponds and lakes. Surface mining activities shall avoid disturbances to, enhance where practicable, or restore, habitats of unusually high value for fish and wildlife.

(g) Where fish and wildlife habitat is to be a postmining land use, the plant species to be used on reclaimed areas shall be selected on the basis of the following criteria:

- (1) Their proven nutritional value for fish or wildlife.
- (2) Their use as cover for fish or wildlife.
- (3) Their ability to support and enhance fish or wildlife habitat after the release of performance bonds. The selected plants shall be grouped and distributed in a manner which optimizes edge effect, cover, and other benefits to fish and wildlife.

(h) Where cropland is to be the postmining land use, and where appropriate for wildlife- and crop-management practices, the permittee shall intersperse the fields with trees, hedges, or fence rows throughout the harvested area to break up large blocks of monoculture and to diversify habitat types for birds and other animals.

(i) Where residential, public service, or industrial uses are to be the postmining land use, and where consistent with the approved postmining land use, the permittee shall intersperse reclaimed lands with greenbelts utilizing species of grass, shrubs, and trees useful as food and cover for wildlife.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.97, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-816.99. Slides and other damage.

(a) An undisturbed natural barrier shall be provided beginning at the elevation of the lowest coal seam to be mined and extended from the outslope for such distance as may be determined by the division as is needed to assure stability. The barrier shall be retained in place to prevent slides and erosion.

(b) At any time a slide occurs which may have a potential adverse affect on public property, health, safety, or the environment, the person who conducts the surface mining activities shall notify the division by the fastest available means and comply with any remedial measures required by the division.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.99, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July

17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-816.100. Contemporaneous reclamation.

(a) General. Reclamation efforts, including but not limited to backfilling, grading, topsoil replacement, and revegetation, on all land that is disturbed by surface mining activities shall occur as contemporaneously as practicable with mining operations, except when such mining operations are conducted in accordance with a variance for concurrent surface and underground mining activities issued under 4VAC25-130-785.18.

(b) Timing of backfilling and grading.

(1) Contour mining. Rough backfilling and grading shall follow coal removal by not more than 60 days or 1,500 linear feet. The division may grant additional time for rough backfilling and grading if the permittee can demonstrate, through a detailed written analysis under 4VAC25-130-780.18(b)(3), that additional time is necessary.

(2) Open pit mining with thin overburden. Rough backfilling and grading shall occur in accordance with the time schedule approved by the division, on the basis of the materials submitted under 4VAC25-130-780.18(b)(3), which shall specifically establish in stated increments the period between removal of coal and completion of backfilling and grading.

(3) Area strip mining. Rough backfilling and grading shall be completed within 180 days following coal removal and shall not be more than four spoil ridges behind the pit being worked, the spoil from the active pit being considered the first ridge. The division may grant additional time for rough backfilling and grading if the permittee can demonstrate, through a detailed written analysis under 4VAC25-130-780.18(b)(3), that additional time is necessary.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.100, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-816.102. Backfilling and grading; general requirements.

(a) Disturbed areas shall be backfilled and graded to:

(1) Achieve the approximate original contour, except as provided in subsection (k) of this section;

(2) Eliminate all highwalls, spoil piles, and depressions, except as provided in subsection (h) (small depressions) and in subsection (k)(3)(iii)(previously mined highwalls) of this section;

(3) Achieve a postmining slope that does not exceed either the angle of repose or such lesser slope as is necessary to achieve a minimum long-term static safety factor of 1.3 and to prevent slides;

- (4) Minimize erosion and water pollution both on and off the site; and
 - (5) Support the approved postmining land use.
- (b) Spoil, except excess spoil disposed of in accordance with 4VAC25-130-816.71 through 4VAC25-130-816.75, shall be returned to the mined-out area.
- (c) Spoil and waste materials shall be compacted where advisable to ensure stability or to prevent leaching of toxic materials.
- (d) Spoil may be placed on the area outside the mined-out area in nonsteep slope areas to restore the approximate original contour by blending the spoil into the surrounding terrain if the following requirements are met:
- (1) All vegetative and organic material shall be removed from the area.
 - (2) The topsoil on the area shall be removed, segregated, stored, and redistributed in accordance with 4VAC25-130-816.22.
 - (3) The spoil shall be backfilled and graded on the area in accordance with the requirements of this section.
- (e) Disposal of coal processing waste and underground development waste in the mined-out area shall be in accordance with 4VAC25-130-816.81 and 4VAC25-130-816.83 as provided in subdivisions (1) and (2) of this subsection, except that a long-term static safety factor of 1.3 shall be achieved.
- (1) Disposal of coal processing waste and underground development waste in the mined-out area to backfill disturbed areas shall be in accordance with 4VAC25-130-816.81.
 - (2) Disposal of coal processing waste and underground development waste in the mined-out area as a refuse pile and not to backfill disturbed areas shall be in accordance with 4VAC25-130-816.81 and 4VAC25-130-816.83. The division may approve a variance to 4VAC25-130-816.83 (a) (2) if the applicant demonstrates that the area above the refuse pile is small and that appropriate measures will be taken to direct or convey runoff across the surface area of the pile in a controlled manner.
- (f) Exposed coal seams, acid- and toxic-forming materials, and combustible materials exposed, used, or produced during mining shall be covered with a minimum of 4 feet of nontoxic and noncombustible material, or treated, to control the impact on surface and ground water in accordance with 4VAC25-130-816.41, to prevent sustained combustion, and to minimize adverse effects on plant growth and the approved postmining land use. Acid- and toxic-forming materials shall not be buried or stored in proximity to any drainage course.
- (g) Cut-and-fill terraces may be allowed by the division where:
- (1) Needed to conserve soil moisture, ensure stability, and control erosion on final-graded slopes, if the terraces are compatible with the approved postmining land use; or
 - (2) Specialized grading, foundation conditions, or roads are required for the approved postmining land use, in which case the final grading may include a terrace of adequate width to ensure the safety, stability, and erosion control necessary to implement the postmining

land-use plan.

- (h) Small depressions may be constructed if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation.
- (i) Permanent impoundments may be approved if they meet the requirements of 4VAC25-130-816.49 and 4VAC25-130-816.56 and if they are suitable for the approved postmining land use.
- (j) Preparation of final-graded surfaces shall be conducted in a manner that minimizes erosion and provides a surface for replacement of topsoil that will minimize slippage.
- (k) The postmining slope may vary from the approximate original contour when:
 - (1) The standards for thin overburden in 4VAC25-130-816.104 are met;
 - (2) The standards for thick overburden in 4VAC25-130-816.105 are met; or
 - (3) Approval is obtained from the division for:
 - (i) Mountaintop removal operations in accordance with 4VAC25-130-785.14;
 - (ii) A variance from approximate original contour requirements in accordance with 4VAC25-130-785.16; or
 - (iii) Incomplete elimination of highwalls in previously mined areas in accordance with 4VAC25-130-816.106(e).

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.102, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 11, Issue 26, eff. October 18, 1995.

4VAC25-130-816.104. Backfilling and grading; thin overburden.

- (a) Thin overburden exists when spoil and other waste materials available from the entire permit area is insufficient to restore the disturbed area to its approximate original contour. Insufficient spoil and other waste materials occur where the overburden thickness times the swell factor, plus the thickness of other available waste materials, is less than the combined thickness of the overburden and coal bed prior to removing the coal, so that after backfilling and grading the surface configuration of the reclaimed area would not:
 - (1) Closely resemble the surface configuration of the land prior to mining; or
 - (2) Blend into and complement the drainage pattern of the surrounding terrain.
- (b) Where thin overburden occurs within the permit area, the permittee at a minimum shall:
 - (1) Use all spoil and other waste materials available from the entire permit area to attain the lowest practicable grade, but not more than the angle of repose; and

(2) Meet the requirements of 4VAC25-130-816.102(a)(2) through (j).

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.104, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 15, Issue 6, eff. January 6, 1999.

4VAC25-130-816.105. Backfilling and grading; thick overburden.

(a) Thick overburden exists when spoil and other waste materials available from the entire permit area is more than sufficient to restore the disturbed area to its approximate original contour. More than sufficient spoil and other waste materials occur where the overburden thickness times the swell factor, plus the thickness of other available waste materials, is more than the combined thickness of the overburden and coal bed prior to removing the coal, so that after backfill and grading the surface configuration of the reclaimed area would not:

- (1) Closely resemble the surface configuration of the land prior to mining; or
- (2) Blend into and complement the drainage pattern of the surrounding terrain.

(b) Where thick overburden occurs within the permit area, the permittee at a minimum shall:

- (1) Restore the approximate original contour and then use the remaining spoil and other waste materials to attain the lowest practicable grade, but not more than the angle of repose;
- (2) Meet the requirements of 4VAC25-130-816.102(a)(2) through (j); and
- (3) Dispose of any excess spoil in accordance with 4VAC25-130-816.71 through 4VAC25-130-816.75.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.105, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 15, Issue 6, eff. January 6, 1999; Volume 23, Issue 13, eff. April 4, 2007.

4VAC25-130-816.106. Backfilling and grading; previously mined areas.

(a) Remining operations on previously mined areas that contain a pre-existing highwall shall comply with the requirements of 4VAC25-130-816.102 through 4VAC25-130-816.107, except as provided in this section.

(b) The requirements of 4VAC25-130-816.102(a)(1) and (a)(2) requiring the elimination of highwalls shall not apply to remining operations where the volume of all reasonably available spoil is demonstrated in writing to the division to be insufficient to completely backfill the reaffected or enlarged highwall. The highwall shall be eliminated to the maximum extent technically practical in accordance with the following criteria:

- (1) All spoil generated by the remining operation and any other reasonably available spoil shall be used to backfill the area. Reasonably available spoil in the immediate vicinity of the remining operation shall be included within the permit area.
- (2) The backfill shall be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability.
- (3) Any highwall remnant shall be stable and not pose a hazard to the public health and safety or to the environment. The permittee shall demonstrate, to the satisfaction of the division, that the highwall remnant is stable.
- (4) Spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbances will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.
- (5) Access roads shall be provided from the bench to the top of the highwall approximately every 2,500 feet. Access roads shall be constructed to allow access by 4-wheel drive vehicles.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.106, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-816.107. Backfilling and grading; steep slopes.

(a) Surface mining activities on steep slopes shall be conducted so as to meet the requirements of 4VAC25-130-816.102 through 4VAC25-130-816.106, and the requirements of this section except where mining is conducted on flatter gently rolling terrain with an occasional steep slope through which the mining proceeds and leaves a plain or predominantly flat area or where operations are conducted in accordance with Part 824.

(b) The following materials shall not be placed or allowed to remain on the downslope:

- (1) Spoil.
- (2) Waste materials of any type.
- (3) Debris, including that from clearing and grubbing.
- (4) Abandoned or disabled equipment.

(c) Land above the highwall shall not be disturbed unless the division finds that this disturbance

will facilitate compliance with the environmental protection standards of this Subchapter and the disturbance is limited to that necessary to facilitate compliance.

(d) Woody materials shall not be buried in the backfilled area unless the division determines that the proposed method for placing woody material within the backfill will not deteriorate the stable condition of the backfilled area.

(e) The permittee must demonstrate to the division, using standard geotechnical analysis, that the minimum static factor of safety for the stability of all portions of the reclaimed land is at least 1.3. A lower or higher factor of safety may be specified by the division upon a finding that the backfilled area will not present any actual or probable hazard to public property, health, safety, and the environment. The factor of safety specified shall be based on accepted geotechnical engineering analyses. A lower factor of safety shall be approved only upon a demonstration that:

(i) The degree of uncertainty in the calculation has been reduced through the use of thorough geotechnical testing and analyses. Sufficient investigation and laboratory testing shall be conducted to determine the design requirements for stability of the backfilled area. The testing and analyses shall include at a minimum consideration of the properties of the spoil to be backfilled, foundation conditions, and surface and groundwater flows.

(ii) The backfilled area will not present any actual or probable hazard to public health and safety or the environment.

(iii) A system of underdrains is utilized to assure that the phreatic surface within the backfilled area is controlled. The underdrains shall be constructed of non-degradable, non-acid or toxic-forming material such as natural sand and gravel, sandstone, or other durable rock that will not slake in water and which is essentially free of coal, clay, or shale. The internal drainage system must ensure continued free drainage of anticipated seepage from precipitation and from springs or wet weather seeps. The drain size shall be designed to safely route the anticipated seepage flows over the long term life of the backfilled area.

(iv) The design shall be certified by a qualified registered professional engineer experienced in the construction of earth and rockfill embankments as being in conformance with accepted professional standards.

(v) The backfilled area shall be inspected by a qualified registered professional engineer or other qualified professional specialist experienced in the construction of earth and rock-fill embankments during critical construction periods. The registered engineer shall provide to the division a certified report within two weeks after each inspection that the backfilled area has been constructed as specified in the design approved by the division.

(f) Drainage channels or roads which are approved under 4VAC25-130-816.133 for the postmining land use and which are to be located in the uppermost portion of the backfilled area shall be approved by the division only upon a finding that the highwall shall be completely covered. The division may approve incorporating the drainage channel or road as an integral part of the backfilled area with the requirements to blend or shave the highwall into the natural terrain, if the standards of this section are satisfied.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.107, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-816.111. Revegetation; general requirements.

(a) The permittee shall establish on regraded areas and on all other disturbed areas except water areas and surface areas of roads that are approved as part of the postmining land use, a vegetative cover that is in accordance with the approved permit and reclamation plan and that is-

- (1) Diverse, effective, and permanent;
- (2) Comprised of species native to the area, or of introduced species where desirable and necessary to achieve the approved postmining land use and approved by the division;
- (3) At least equal in extent of cover to the natural vegetation of the area; and
- (4) Capable of stabilizing the soil surface from erosion.

(b) The reestablished plant species shall-

- (1) Be compatible with the approved postmining land use;
- (2) Have the same seasonal characteristics of growth as the original vegetation;
- (3) Be capable of self- regeneration and plant succession;
- (4) Be compatible with the plant and animal species of the area; and
- (5) Meet the requirements of applicable State and Federal seed, poisonous and noxious plant, and introduced species laws or regulations.

(c) The division may grant exception to the requirements of Paragraphs (b)(2) and (b)(3) of this section when the species are necessary to achieve a quick-growing, temporary, stabilizing cover, and measures to establish permanent vegetation are included in the approved permit and reclamation plan.

(d) When the division approves a cropland postmining land use, the division may grant exception to the requirements of Paragraphs (a)(1), (a)(3), (b)(2), and (b)(3) of this section. The requirements of Part 823 apply to areas identified as prime farmland.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.111, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July

17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-816.113. Revegetation; timing.

Disturbed areas shall be planted during the first normal period for favorable planting conditions after replacement of the plant-growth medium. The normal period for favorable planting is that planting time generally accepted locally for the type of plant materials selected. When necessary to effectively control erosion, disturbed areas shall be planted, as contemporaneously as practicable with the completion of backfilling and grading, with a temporary cover of small grains, grasses, or legumes until a permanent cover is established.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.113, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-816.114. Revegetation; mulching and other soil stabilizing practices.

Suitable mulch or other soil stabilizing practices shall be used on all areas that have been regraded and covered by topsoil or topsoil substitutes. The division may waive this requirement if seasonal, soil, or slope factors result in a condition where mulch or other soil stabilizing practices are not necessary to control erosion and to promptly establish an effective vegetative cover.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.114, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-816.116. Revegetation; standards for success.

(a) Success of revegetation shall be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in natural vegetation of the area, and the general requirements of 4VAC25-130-816.111.

(1) Statistically valid sampling techniques shall be used for measuring success.

(2) Ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90% of the success standard. The sampling techniques

for measuring success shall use a 90% statistical confidence interval (i.e., one-sided test with a 0.10 alpha error). Sampling techniques for measuring woody plant stocking, ground cover, and production shall be in accordance with techniques approved by the division.

(b) Standards for success shall be applied in accordance with the approved postmining land use and, at a minimum, the following conditions:

(1) For areas developed for use as grazing land or pasture land, the ground cover and production of living plants on the revegetated area shall be at least equal to that of a reference area or if approved by the division, a vegetative ground cover of 90% for areas planted only in herbaceous species and productivity at least equal to the productivity of the premining soils may be achieved. Premining productivity shall be based upon data of the U.S. Natural Resources Conservation Service and measured in such units as weight of material produced per acre or animal units supported.

(2) For areas developed for use as cropland, crop production on the revegetated area shall be at least equal to that of a reference area or if approved by the division, crop yields shall be at least equal to the yields for reference crops from unmined lands. Reference crop yields shall be determined from the current yield records of representative local farms in the surrounding area or from the average county yields recognized by the U.S. Department of Agriculture.

(3) For areas to be developed for fish and wildlife habitat, undeveloped land, recreation, shelter belts, or forestry, the stocking of woody plants must be at least equal to the rates specified in the approved reclamation plan. To minimize competition with woody plants, herbaceous ground cover should be limited to that necessary to control erosion and support the postmining land use. Seed mixtures and seeding rates will be specified in the approved reclamation plan. Such parameters are described as follows:

(i) Minimum stocking and planting arrangements shall be specified by the division on the basis of local and regional conditions and after consultation with and approval by the state agencies responsible for the administration of forestry and wildlife programs.

Consultation and approval may occur on either a program wide or a permit specific basis.

(ii) Trees and shrubs that will be used in determining the success of stocking and the adequacy of the plant arrangement shall have utility for the approved postmining land use. Trees and shrubs counted in determining such success shall be healthy and have been in place for not less than two growing seasons. At the time of bond release, at least 80% of the trees and shrubs used to determine such success shall have been in place for at least three years. Root crown or sprouts over one foot in height shall count as one toward meeting the stocking requirements. Where multiple stems occur, only the tallest stem will be counted.

(iii) Vegetative ground cover shall not be less than that required to control erosion and achieve the approved postmining land use.

(iv) Where commercial forest land is the approved postmining land use:

(A) The area shall have a minimum stocking of 400 trees per acre.

(B) All countable trees shall be commercial species and shall be well distributed over each acre stocked.

(C) Additionally, the area shall have an average of at least 40 wildlife food-producing shrubs per acre. The shrubs shall be suitably located for wildlife enhancement, and may be distributed or clustered.

(v) Where woody plants are used for wildlife management, recreation, shelter belts, or forest uses other than commercial forest land:

(A) The stocking of trees, shrubs, half-shrubs and the ground cover established on the revegetated area shall approximate the stocking and ground cover on the surrounding unmined area and shall utilize local and regional recommendations regarding species composition, spacing and planting arrangement;

(B) Areas planted only in herbaceous species shall sustain a vegetative ground cover of 90%;

(C) Areas planted with a mixture of herbaceous and woody species shall sustain a herbaceous vegetative ground cover in accordance with guidance provided by the division and the approved forestry reclamation plan and establish an average of 400 woody plants per acre. At least 40 of the woody plants for each acre shall be wildlife food-producing shrubs located suitably for wildlife enhancement, which may be distributed or clustered on the area.

(4) For areas to be developed for industrial, commercial, or residential use less than two years after regrading is completed, the vegetative ground cover shall not be less than that required to control erosion.

(5) For areas previously disturbed by mining that were not reclaimed to the requirements of this subchapter and that are remined or otherwise redisturbed by surface coal mining operations, as a minimum, the vegetative ground cover shall be not less than the ground cover existing before redisturbance, and shall be adequate to control erosion.

(c) (1) The period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the division in accordance with subdivision (c)(3) of this section.

(2) The period of responsibility shall continue for a period of not less than:

(i) Five full years except as provided in subdivision (c)(2)(ii) of this section. The vegetation parameters identified in subsection (b) of this section for grazing land or pastureland and cropland shall equal or exceed the approved success standard during the growing seasons of any two years of the responsibility period, except the first year. Areas approved for the other uses identified in subsection (b) of this section shall equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.

(ii) Two full years for lands eligible for reining. To the extent that the success standards are established by subdivision (b)(5) of this section, the lands shall equal or exceed the standards during the growing season of the last year of the responsibility period.

(3) The division may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, without extending the period of responsibility for revegetation success and bond liability, if such practices can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices shall be normal conservation practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control; and any pruning, reseeding and/or transplanting specifically necessitated by such actions.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.116, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 12, Issue 2, eff. November 15, 1995; Volume 14, Issue 5, eff. December 24, 1997; Volume 23, Issue 16, eff. May 16, 2007; Volume 25, Issue 12, eff. March 18, 2009.

4VAC25-130-816.131. Cessation of operations; temporary.

(a) The permittee shall effectively secure surface facilities in areas in which there are no current operations, but in which operations are to be resumed under an approved permit. Temporary abandonment shall not relieve a permittee of his obligation to comply with any provisions of the approved permit.

(b) Before temporary cessation of mining and reclamation operations for a period of 30 days or more, or as soon as it is known that a temporary cessation will extend beyond 30 days, the permittee shall submit to the division a notice of intention to cease or abandon mining and reclamation operations. This notice shall include a statement of the exact number of acres which will have been affected in the permit area, prior to such temporary cessation, the extent and kind of reclamation of those areas which will have been accomplished, identification of the backfilling, regrading, revegetation, environmental monitoring, and water treatment activities that will continue during the temporary cessation, and the anticipated time period for which the temporary cessation of mining and reclamation operations will be in effect.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.131, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-816.132. Cessation of operations; permanent.

(a) Persons who cease surface mining activities permanently shall close or backfill or otherwise permanently reclaim all affected areas, in accordance with this chapter and the permit approved by the division.

(b) All underground openings, equipment, structures, or other facilities not required for monitoring, unless approved by the division as suitable for the postmining land use or environmental monitoring, shall be removed and the affected land reclaimed.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.132, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-816.133. Postmining land use.

(a) General. All disturbed areas shall be restored in a timely manner to conditions that are capable of supporting-

- (1) The uses they were capable of supporting before any mining; or
- (2) Higher or better uses.

(b) Determining premining uses of land. The premining uses of land to which the postmining land use is compared shall be those uses which the land previously supported, if the land has not been previously mined and has been properly managed. The postmining land use for land that has been previously mined and not reclaimed shall be judged on the basis of the land use that existed prior to any mining; provided that, if the land cannot be reclaimed to the land use that existed prior to any mining because of the previously mined condition, the postmining land use shall be judged on the basis of the highest and best use that can be achieved which is compatible with surrounding areas and does not require the disturbance of areas previously unaffected by mining.

(c) Criteria for alternative postmining land uses. Higher or better uses may be approved by the division as alternative postmining land uses after consultation with the landowner or the land management agency having jurisdiction over the lands, if the proposed uses meet the following criteria:

- (1) There is a reasonable likelihood for achievement of the use.

(2) The use does not present any actual or probable hazard to public health or safety, or threat of water diminution or pollution.

(3) The use will not-

(i) Be impractical or unreasonable;

(ii) Be inconsistent with applicable land use policies or plans;

(iii) Involve unreasonable delay in implementation; or

(iv) Cause or contribute to violation of Federal, State, or local law.

(d) Approximate original contour: Criteria for variance. Surface coal mining operations that meet the requirements of this Paragraph may be conducted under a variance from the requirement to restore disturbed areas to their approximate original contour, if the following requirements are satisfied:

(1) The division grants the variance under a permit issued in accordance with 4VAC25-130-785.16.

(2) The alternative postmining land use requirements of Paragraph (c) of this section are met.

(3) All applicable requirements of the Act and this chapter, other than the requirement to restore disturbed areas to their approximate original contour, are met.

(4) After consultation with the appropriate land use planning agencies, if any, the potential use is shown to constitute an equal or better economic or public use.

(5) The proposed use is designed and certified by a qualified registered professional engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site.

(6) After approval, where required, of the appropriate State environmental agencies, the watershed of the permit and adjacent areas is shown to be improved.

(7) The highwall is completely backfilled with spoil material, in a manner which results in a static factor of safety of at least 1.3, using standard geotechnical analysis.

(8) Only the amount of spoil as is necessary to achieve the postmining land use, ensure the stability of spoil retained on the bench, and meet all other requirements of the Act and this chapter is placed off the mine bench. All spoil not retained on the bench shall be placed in accordance with 4VAC25-130-816.71 through 4VAC25-130-816.75.

(9) The surface landowner of the permit area has knowingly requested, in writing, that a variance be granted, so as to render the land, after reclamation, suitable for an industrial, commercial, residential, or public use (including recreational facilities).

(10) Federal, State, and local government agencies with an interest in the proposed land use have an adequate period in which to review and comment on the proposed use.

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.133, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-816.150. Roads; general.

(a) Road classification system.

- (1) Each road, as defined in 4VAC25-130-700.5, shall be classified as either a primary road or an ancillary road.
- (2) A primary road is any road which is--
 - (i) Used for transporting coal or spoil;
 - (ii) Frequently used for access or other purposes for a period in excess of six months; or
 - (iii) To be retained for an approved postmining land use.
- (3) An ancillary road is any road not classified as a primary road.

(b) Performance standards. Each road shall be located, designed, constructed, reconstructed, used, maintained and reclaimed so as to:

- (1) Control or prevent erosion, siltation, and the air pollution attendant to erosion, including road dust as well as dust occurring on other exposed surfaces, by measures such as vegetating, watering, using chemical or other dust suppressants, or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices;
- (2) Control or prevent damage to fish, wildlife or their habitat and related environmental values;
- (3) Control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area;
- (4) Neither cause nor contribute to, directly or indirectly, the violation of State or Federal water quality standards applicable to receiving waters;
- (5) Refrain from significantly altering the normal flow of water in streambeds or drainage channels;
- (6) Prevent or control damage to public or private property including the prevention or mitigation of adverse effects on lands within the boundaries of units of The National Park System, The National Wildlife Refuge System, The National System of Trails, The National Wilderness Preservation System, The Wild and Scenic Rivers System, including designated study rivers, and national recreation areas designated by Act of Congress; and
- (7) Use non-acid and non-toxic-forming substances in road surfacing.

(c) Design and construction limits and establishment of design criteria. To ensure environmental protection appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement, and culvert size, in accordance with current, prudent engineering practices, and any necessary design criteria established by the division.

(d) Location.

(1) No part of any road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the division in accordance with the applicable portions of 4VAC25-130-816.41 through 4VAC25-130-816.43 and 4VAC25-130-816.57.

(2) Roads shall be located to minimize downstream sedimentation and flooding.

(e) Maintenance.

(1) A road shall be maintained to meet the performance standards of this Part and any additional criteria specified by the division.

(2) A road damaged by a catastrophic event, such as a flood or earthquake, shall be repaired as soon as practical after the damage has occurred.

(f) Reclamation.

(1) A road not to be retained under an approved post-mining land use shall be reclaimed in accordance with the approved reclamation plan as soon as practicable after it is no longer needed for mining and reclamation operations. This reclamation shall include:

(i) Closing the road to traffic;

(ii) Removing all bridges and culverts unless approved as part of the postmining land use;

(iii) Removing or otherwise disposing of road-surfacing materials that are incompatible with the postmining land use and revegetation requirements;

(iv) Reshaping cut and fill slopes as necessary to be compatible with the post-mining land use and to complement the drainage pattern of the surrounding terrain;

(v) Protecting the natural drainage patterns by installing dikes or cross drains as necessary to control surface runoff and erosion. A water bar shall be placed at the head of all pitched grades regardless of other spacing. Water bars shall cross the road at approximately a 30 degree angle. Water bars of the ditch and earth berm type shall be installed according to the following provisions:

Percent of Road Grade	Spacing of Water Bars in Feet
0 - 2	250
3 - 5	135

6 - 10	80
11 - 15	60
15 + 20	40

(vi) Scarifying or ripping the roadbed; replacing topsoil or substitute material, and revegetating disturbed surfaces in accordance with 4VAC25-130-816.22 and 4VAC25-130-816.111 through 4VAC25-130-816.116.

(2) Roads which are to be retained as part of an approved post-mining land use shall be constructed or reconstructed to be compatible with that use. Construction or reconstruction shall include:

(i) Restoring an existing road to a condition equal to or better than its pre-mining condition; and

(ii) Meeting the requirements of 4VAC25-130-816.151 as appropriate.

(g) The division may approve alternative specifications if they are demonstrated to result in performance equal to or better than that resulting from roads complying with 4VAC25-130-816.150 and 4VAC25-130-816.151.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.150, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-816.151. Primary roads.

Primary roads shall meet the requirements of 4VAC25-130-816.150 and the additional requirements of this section.

(a) Certification and construction.

(1) The construction or reconstruction of primary roads shall be certified in a report to the division by a qualified registered professional engineer. The report shall indicate that the primary road has been constructed or reconstructed as designed and in accordance with the approved plan.

(2) The centerline of a proposed road shall be flagged prior to field inspection.

(3) All road grades shall be subject to a tolerance of plus or minus 2.0% grade.

(4) Grading. The grade of a road shall not exceed 10% unless a steeper grade is justified by site conditions and topography.

(i) The grade shall be controlled to minimize erosion and sedimentation.

(ii) The road surface shall be sloped toward the ditch line at the minimum rate of ½ inch per foot of width or crowned at the minimum rate of ½ inch per foot of width as measured from the centerline of the road.

(5) Cuts. Cut slopes shall not be steeper than 1v:1.5h in unconsolidated materials, 1v:1h in shale, or 1v:0.25h in sandstone. Steeper slopes may be specifically authorized by the division based on the geotechnical analysis.

(6) Revegetation. All disturbed areas shall be seeded and mulched immediately after construction. If construction occurs during the non-seeding period of November 1 through February 15, the permittee may use alternate methods upon approval by the division for control of erosion. Adequate vegetation to control erosion shall be maintained.

(7) Excess or unsuitable material from excavations shall be disposed of in accordance with 4VAC25-130-816.71. Acid- and toxic-forming material shall be disposed of in accordance with 4VAC25-130-816.41, 4VAC25-130-816.81, and 4VAC25-130-816.102.

(8) Temporary erosion-control measures shall be implemented during construction to minimize sedimentation and erosion until permanent control measures can be established.

(b) Safety factor. The following specifications shall be utilized for embankment construction. The division may specifically authorize alternate specifications if the geotechnical analysis demonstrates that a minimum safety factor of 1.3 can be maintained.

(1) All organic material and topsoil shall be removed from the embankment foundation and no organic material, topsoil, or other unsuitable material shall be placed beneath or in any embankment.

(2) Where an embankment is to be placed on side slopes less than 36%, the following conditions shall be required:

(i) The embankment shall be constructed in uniform, compacted layers not exceeding 4 feet in thickness.

(ii) The embankment slopes shall not be steeper than 1v:1.5h.

(3) Where an embankment is to be placed on side slopes exceeding 36% the following additional conditions shall be required:

(i) A keyway cut shall be constructed at the toe of the fill to ensure stability; the keyway cut shall be at least 10 feet in width and shall be sloped inward.

(ii) The embankment shall be constructed in uniform compacted layers not exceeding two feet in thickness.

(4) Acid-producing materials may be used in the embankments of only those roads constructed or reconstructed on coal mine waste disposal facilities, if it is demonstrated that no additional acid will leave the confines of the facility. In no case shall acid-producing refuse material be used outside the confines of the coal mine waste disposal facility. Restoration of

the road shall be in accordance with the requirements of 4VAC25-130-816.102 through 4VAC25-130-816.116.

(c) Location.

(1) To minimize erosion, a primary road shall be located, insofar as practical, on the most stable available surface.

(2) Fords of perennial or intermittent streams by primary roads are prohibited unless they are specifically approved by the division as temporary routes during periods of road construction.

(d) Drainage control. In accordance with the approved plan.

(1) Each primary road shall be constructed or reconstructed, and maintained to have adequate drainage control, using structures such as, but not limited to, bridges, ditches, cross drains, and ditch relief drains. The drainage control system shall be designed to safely pass the peak runoff from a 10-year, six-hour precipitation event, or greater event as specified by the division.

(2) Drainage pipes and culverts shall be installed as designed, and maintained in a free and operating condition and to prevent or control erosion at inlets and outlets.

(i) Sufficient culverts shall be installed to limit erosion in ditchlines. Additional culverts may be required by the division if excessive erosion or sedimentation is anticipated or observed.

(ii) Culverts shall cross the road at not less than a 30° angle downgrade, except if risers are used. Culverts placed in intermittent or perennial streams shall be straight and coincide with normal flow.

(iii) Culverts shall be placed on a minimum 4.0% grade.

(iv) Culverts shall be at least 12 inches in diameter.

(3) Drainage ditches shall be designed to prevent uncontrolled drainage over the road surface and embankment. Trash racks and debris basins shall be installed in the drainage ditches where debris from the drainage area may impair the functions of the drainage and sediment control structures. A ditch shall be provided on both sides of a through-cut and on the inside shoulder of a cut and fill section. Water shall be intercepted before reaching a switch back or large fill and drained safely away. Water from a fill or switchback shall be released below the fill through conduits or in rip rapped channels and shall not be discharged onto the fill. Ditches shall have a minimum constructed depth of one foot, measured from the lowest point in the road surface adjacent to the ditch.

(4) Culverts shall be installed and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the weight of vehicles using the road.

(5) Natural stream channels shall not be altered or relocated without the prior approval of the division in accordance with the applicable portions of 4VAC25-130-816.41 through 4VAC25-

130-816.43 and 4VAC25-130-816.57.

(6) Except as provided in subdivision (c)(2) of this section, structures for perennial or intermittent stream channel crossings shall be made using bridges, culverts, low-water crossings, or other structures designed, constructed, and maintained using current, prudent engineering practice. The drainage structure itself can be at least equal to or greater than the stream channel capacity immediately upstream and downstream of the crossing. Low-water crossings shall be designed, constructed, and maintained to prevent erosion of the structure or streambed and additional contributions of suspended solids to streamflow.

(7) (i) Sediment control shall be provided as part of the road drainage system unless runoff is diverted to other approved drainage/sediment control structures.

(ii) Sediment control structures along a road shall be designed to provide 0.025 acre-feet of sediment storage capacity for each acre of disturbed area draining to the structure if the structure is the final discharge point for effluent from the permit area. Other capacities may be required by the division.

(e) Surfacing. Primary roads shall be surfaced with rock, crushed stone, gravel, asphalt, or other material approved by the division as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road.

(f) Maintenance. Routine maintenance for primary roads shall include repairs to the road surface, blading, filling potholes and adding replacement gravel or asphalt. Sediment control structures shall be cleaned regularly and when sediment accumulation may impair their functioning. Maintenance shall also include revegetation, brush removal, and minor reconstruction of road segments as necessary.

(g) Coal haulage. Any roads used for transporting coal shall have construction or reconstruction completed prior to the hauling of coal.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.151, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 12, Issue 2, eff. November 15, 1995.

4VAC25-130-816.152. Existing roads.

Where existing roads that are to be used meet the performance standards of 4VAC25-130-816.150 and 4VAC25-130-816.151 or it can be demonstrated that reconstruction to meet the design standards of 4VAC25-130-816.150 and 4VAC25-130-816.151 would result in greater environmental harm, the division may waive the design requirements of those sections; however, such roads are to be constructed and maintained to control or prevent erosion. Review will place emphasis on stabilization and the water control system.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.152, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 12, Issue 2, eff. November 15, 1995.

4VAC25-130-816.180. Utility installations.

All surface coal mining operations shall be conducted in a manner which minimizes damage, destruction, or disruption of services provided by oil, gas, and water wells; oil, gas, and coal-slurry pipelines; railroads; electric and telephone lines; and water and sewage lines which pass over, under, or through the permit area, unless otherwise approved by the owner of those facilities and the division.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.180, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-816.181. Support facilities.

(a) Support facilities shall be operated in accordance with a permit issued for the mine or coal preparation operation to which it is incident or from which its operation results.

(b) In addition to the other provisions of this Part, support facilities shall be located, maintained, and used in a manner that-

- (1) Prevents or controls erosion and siltation, water pollution, and damage to public or private property; and
- (2) To the extent possible using the best technology currently available-
 - (i) Minimizes damage to fish, wildlife, and related environmental values; and
 - (ii) Minimizes additional contributions of suspended solids to streamflow or runoff outside the permit area. Any such contributions shall not be in excess of limitations of State or Federal law.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 816.181, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

Part 817

Permanent Program Performance Standards—Underground Mining Activities

4VAC25-130-817.11. Signs and markers.

(a) Specifications. Signs and markers required under this part shall—

- (1) Be posted, maintained, and removed by the person who conducts the underground mining activities;
- (2) Be of a uniform design throughout the operation that can be easily seen and read;
- (3) Be made of durable material;
- (4) Be made of or marked with fluorescent or reflective paint or material if the signs are permit boundary markers on areas that are located on steep slopes above private dwellings or other occupied buildings; and
- (5) Conform to local ordinances and codes.

(b) Maintenance. Signs and markers shall be maintained during the conduct of all activities to which they pertain.

(c) Mine and permit identification signs.

- (1) Identification signs shall be displayed at each point of access from public roads to areas of surface operations and facilities on permit areas for underground mining activities.
- (2) Signs shall show the name, business address, and telephone number of the permittee and the identification number of the current permit authorizing underground mining activities.
- (3) Signs shall be retained and maintained until after the release of all bonds for the permit area.

(d) Perimeter markers. The perimeter of a permit area shall be clearly marked prior to the permit review conducted by the division's field enforcement personnel. The perimeter shall be clearly marked by flagging, stakes or signs. All markers shall be easily visible from adjacent markers. The approximate outer perimeter of the solid portion of any pre-existing bench shall be closely marked prior to permit review.

(e) Buffer zone markers. Buffer zones shall be marked along their boundaries, prior to permit review conducted by the division's field enforcement personnel. The boundaries shall be clearly marked by flagging, stakes or signs as required under 4VAC25-130-817.57. All markers of the buffer zone shall be easily visible from adjacent markers.

(f) Blasting signs. If blasting is conducted incident to underground mining activities, the person who conducts these activities shall:

(1) Conspicuously place signs reading "Blasting Area" along the edge of any blasting area that comes within 100 feet of any public road right of way, and at the point where any other road provides access to the blasting area; and

(2) At all entrances to the permit area from public roads or highways place conspicuous signs which state "Warning! Explosives In Use" which clearly list and describe the meaning of the audible blast warning and all clear signals that are in use, and which explain the marking of blasting areas and charged holes awaiting firing within the permit area.

(g) Topsoil markers. Where topsoil or other vegetation-supporting material is segregated and stockpiled as required under 4VAC25-130-817.22, the stockpiled material shall be clearly marked.

(h) Incremental bonding markers. When the permittee elects to increment the amount of performance bond during the term of the permit, he shall, if required by the division, identify the initial and successive incremental areas for bonding by clearly marking such areas (with markers different from the perimeter markers) prior to disturbing the incremental area(s).

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.11, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 23, Issue 13, eff. April 4, 2007.

4VAC25-130-817.13. Casing and sealing of exposed underground openings; general requirements.

Each exploration hole, other drill or borehole, shaft, well, or other exposed underground opening shall be cased, sealed, or otherwise managed, as approved by the division, to prevent acid or other toxic drainage from entering ground and surface waters, to minimize disturbance to the prevailing hydrologic balance, and to ensure the safety of people, livestock, fish, and wildlife, and machinery in the permit and adjacent areas. If these openings are uncovered or exposed by mining activities within the permit area, they shall be permanently closed, unless approved for water monitoring, or otherwise managed in a manner approved by the division. Use of a drilled hole or borehole or monitoring well as a water well must meet the provisions of 4VAC25-130-817.41. This section does not apply to holes solely drilled and used for blasting, in the area affected by surface operations.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.13, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16,

1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-817.14. Casing and sealing of underground openings; temporary.

(a) Each mine entry which is temporarily inactive, but has a further projected useful service under the approved permit application, shall be protected by barricades or other covering devices, fenced, and posted with signs, to prevent access into the entry and to identify the hazardous nature of the opening. These devices shall be periodically inspected and maintained in good operating condition by the permittee.

(b) Each exploration hole, other drill or bore holes, shafts, wells and other exposed underground openings which have been identified in the approved permit application for use to return underground development waste, coal processing waste or water to underground workings or to be used to monitor ground water conditions, shall be temporarily sealed until actual use.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.14, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-817.15. Casing and sealing of underground openings; permanent.

When no longer needed for monitoring or other use approved by the division upon a finding of no adverse environmental or health and safety effects, or unless approved for transfer as a water well under 4VAC25-130-817.41, each shaft, drift, adit, tunnel, exploratory hole, entranceway or other opening to the surface from underground shall be capped, sealed, backfilled, or otherwise properly managed, as required by the division under 4VAC25-130-817.13 and consistent with 30 CFR 75.1771 and the standards for oil and gas wells of the Virginia division of Mines, as appropriate. Permanent closure measures shall be designed to prevent access to the mine workings by people, livestock, fish and wildlife, and machinery, and to keep acid or other toxic drainage from entering ground or surface waters.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.15, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July

17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-817.22. Topsoil and subsoil.

(a) Removal.

(1)(i) All topsoil shall be removed as a separate layer from the area to be disturbed, and segregated.

(ii) Where the topsoil is of insufficient quantity or of poor quality for sustaining vegetation, the materials approved by the division in accordance with Paragraph (b) of this section shall be removed as a separate layer from the area to be disturbed, and segregated.

(2) If topsoil is less than six inches thick, the permittee may remove the topsoil and the unconsolidated materials immediately below the topsoil and treat the mixture as topsoil.

(3) The division may choose not to require the removal of topsoil for minor disturbances which -

(i) Occur at the site of small structures, such as power poles, signs, or fence lines; or

(ii) Will not destroy the existing vegetation and will not cause erosion.

(4) Timing. All materials to be removed under this section shall be removed after the vegetative cover that would interfere with its salvage is cleared from the area to be disturbed, but before any drilling, blasting, mining, or other surface disturbance takes place.

(b) Substitutes and supplements.

(1) Selected overburden materials may be substituted for, or used as a supplement to, topsoil if the permittee demonstrates to the division, in accordance with 4VAC25-130-784.13 that the resulting soil medium is equal to, or more suitable for sustaining vegetation than, the existing topsoil, and the resulting soil medium is the best available in the permit area to support revegetation.

(2) Substituted or supplemental material shall be removed, segregated, and replaced in compliance with the requirements of this section for topsoil.

(3) Selected overburden materials may be substituted for or used as a supplement to topsoil, if the slope of the land containing the topsoil is greater than 60 percent (3v:5h) and the selected overburden materials satisfy the following criteria:

(i) The results of the analyses of the overburden required in 4VAC25-130-784.13 demonstrates the feasibility of using the overburden materials.

(ii) The substitute material has a pH greater than 5.0, has a net acidity of less than five tons per 1,000 tons of material or a net alkalinity, and is suitable for sustaining vegetation consistent with the standards for vegetation in 4VAC25-130-817.111 through 4VAC25-130-817.116, and the approved postmining land use.

(c) Storage.

(1) Materials removed under Paragraph (a) of this section shall be segregated and stockpiled when it is impractical to redistribute such materials promptly on regraded areas.

(2) Stockpiled materials shall-

(i) Be selectively placed on a stable site within the permit area;

(ii) Be protected from contaminants and unnecessary compaction that would interfere with revegetation;

(iii) Be protected from wind and water erosion through prompt establishment and maintenance of an effective, quick growing vegetative cover or through other measures approved by the division; and

(iv) Not be moved until required for redistribution unless approved by the division.

(3) Where long term surface disturbances will result from facilities such as support facilities and preparation plants and where stockpiling of materials removed under Paragraph (a)(1) of this section would be detrimental to the quality or quantity of those materials, the division may approve the temporary distribution of the soil materials so removed to an approved site within the permit area to enhance the current use of that site until the materials are needed for later reclamation, provided that-

(i) Such action will not permanently diminish the capability of the topsoil of the host site; and

(ii) The material will be retained in a condition more suitable for redistribution than if stockpiled.

(d) Redistribution.

(1) Topsoil materials and substitutes removed under Paragraph (a) and (b) of this section shall be redistributed in a manner that-

(i) Achieves an approximately uniform, stable thickness when consistent with the approved postmining land use, contours, and surface water drainage systems. Soil thickness may also be varied to the extent such variations help meet the specific revegetation goals identified in the permit;

(ii) Prevents excess compaction of the materials; and

(iii) Protects the materials from wind and water erosion before and after seeding and planting.

(2) Before redistribution of the material removed under Paragraph (a) of this section, the regraded land shall be treated if necessary to reduce potential slippage of the redistributed material and to promote root penetration. If no harm will be caused to the redistributed material and reestablished vegetation, such treatment may be conducted after such material is replaced.

(3) The division may choose not to require the redistribution of topsoil or topsoil substitutes on the approved postmining embankments of permanent impoundments or of roads if it determines that-

(i) Placement of topsoil or topsoil substitutes on such embankments is inconsistent with the requirement to use the best technology currently available to prevent sedimentation; and

(ii) Such embankments will be otherwise stabilized.

(4) Nutrients and soil amendments shall be applied to the initially redistributed material when necessary to establish the vegetative cover. The types and amounts of nutrients and soil amendments shall be determined by soil tests performed by a qualified laboratory using standard methods which are approved by the division. If seeding is done without a site specific soil test -

(i) Fertilization rates of 300 pounds of 16-27-14 or 500 pounds of 10-20-10 or equivalents per acre shall be used.

(ii) Liming rates shall be in accordance with the following table:

Mine Spoil pH	Tons of Lime Needed per Acre to Increase pH to:					
	5.1 - 5.5			5.6 - 6.2		
Test	Sandstone	Shale	Mixed	Sandstone	Shale	Mixed
4.0 - 4.5	2	3	2	3	5	4
4.6 - 5.0	1	3	2	2	4	3
5.1 - 5.5	0	2	1	1	3	2
5.6 - 6.0	0	1	0	0	2	1

(iii) Soil tests shall be performed promptly after topsoiling but before application of any supplementary nutrients and any additional lime and fertilizer applied as necessary.

(e) Subsoil segregation. The division may require that the B horizon, C horizon, or other underlying strata, or portions thereof, be removed and segregated, stockpiled, and redistributed as subsoil in accordance with the requirements of Paragraphs (c) and (d) of this section if it finds that such subsoil layers are necessary to comply with the revegetation requirements of 4VAC25-130-817.111, 4VAC25-130-817.113, 4VAC25-130-817.114, and 4VAC25-130-817.116.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.22, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16,

1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 25, Issue 12, eff. March 18, 2009.

4VAC25-130-817.41. Hydrologic-balance protection.

(a) General. All underground mining and reclamation activities shall be conducted to minimize disturbance of the hydrologic balance within the permit and adjacent areas, to prevent material damage to the hydrologic balance outside the permit area, and to support approved postmining land uses in accordance with the terms and conditions of the approved permit and the performance standards of this part. The division may require additional preventative, remedial, or monitoring measures to assure that material damage to the hydrologic balance outside the permit area is prevented. Mining and reclamation practices that minimize water pollution and changes in flow shall be used in preference to water treatment.

(b) Groundwater protection. In order to protect the hydrologic balance, underground mining activities shall be conducted according to the plan approved under 4VAC25-130-784.14(g) and the following:

(1) Groundwater quality shall be protected by handling earth materials and runoff in a manner that minimizes acidic, toxic, or other harmful infiltration to groundwater systems and by managing excavations and other disturbances to prevent or control the discharge of pollutants into the groundwater.

(2) Groundwater quantity shall be protected by handling earth materials and runoff in a manner that will restore approximate premining recharge capacity of the reclaimed area as a whole, excluding coal mine waste disposal areas and fills, so as to allow the movement of water to the groundwater system.

(c) Groundwater monitoring.

(1) Groundwater monitoring shall be conducted according to the groundwater monitoring plan approved under 4VAC25-130-784.14(h). The division may require additional monitoring when necessary.

(2) Representative monitoring.

(i) Representative monitoring points shall be established within 100 feet downgradient from the initial disturbance within each representative area. This distance may be modified by the division if it is demonstrated in the permit application that the 100 feet distance is inappropriate for the monitoring point.

(ii) If degradation, contamination or diminution of water quality or quantity are evident through monitoring, then additional monitoring and/or remedial action may be required by the division.

(3) Source monitoring.

(i) Source monitoring shall be used near isolated acid-producing or toxic-producing material. Monitoring shall be by piezometers or other equipment suitable for monitoring

in the unsaturated zone. Piezometers or alternate equipment shall be installed in backfilled material during or within 45 days after final grading of the area. Installation in fill or temporary storage areas shall be as soon as practicable. Monitoring points shall be of sufficient number and locations so that adverse impacts can be readily detected.

(ii) Representative monitoring may be required by the division in addition to source monitoring when the operation may adversely impact usable ground waters.

(4) Well drilling, construction and completion.

(i) When wells are used, they shall be drilled either to the first water-producing zone or, if no water is encountered, to a depth of 100 feet below each coal seam to be mined. The division may require deeper drilling if site conditions indicate the potential for adverse impacts to a known water-producing zone which is at greater depth.

(ii) Monitoring wells shall be drilled an additional 20 feet into the water-producing zone to aid in pumping.

(iii) Monitoring wells shall:

(A) Accommodate a four-inch submersible pump for sample extraction and measurement of field parameters. Other diameters may be approved by the division if sample extraction is allowed.

(B) Be constructed in a manner which isolates the water-producing zone to be monitored and prevents the mixing of ground waters.

(C) Be grouted from the surface to at least one foot into bedrock, with all leakage around the well casing prevented.

(D) Be capped, locked, and labeled with an identification number.

(E) Be properly developed and the final yield reported.

(F) Not be constructed or packed with materials which would adversely affect the monitoring results obtained.

(iv) Existing wells may be used for monitoring provided that:

(A) The well is located at a point where data representative of the permit or adjacent area will be obtained.

(B) The well penetrates the water-producing zone to be monitored.

(C) The well is constructed in a manner which effectively isolates the water-producing zone.

(D) The well meets the standards of subdivision (c)(4) of this section.

(E) Filtering systems and water softeners are not present which may alter the quality of the water sample. Filters or softeners may be disconnected or bypassed during sampling.

(5) Groundwater monitoring data shall be submitted within 30 days after the end of the calendar quarter to the division. More frequent reporting may be prescribed by the division. Monitoring reports shall include analytical results from each sample taken during the reporting period. When the analysis of any groundwater sample indicates noncompliance with the permit conditions, then the permittee shall promptly notify the division and immediately take the actions provided for in 4VAC25-130-773.17(e) and 4VAC25-130-784.14(g).

(6) Groundwater monitoring shall proceed through mining and continue during reclamation until bond release. Consistent with the procedures of 4VAC25-130-774.13, the division may modify the monitoring requirements including the parameters covered and the sampling frequency if the permittee demonstrates, using the monitoring data obtained under this subdivision, that:

(i) The operation has minimized disturbance to the prevailing hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses; or

(ii) Monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under 4VAC25-130-784.14(h).

(7) Equipment, structures, and other devices used in conjunction with monitoring the quality and quantity of groundwater onsite and offsite shall be properly installed, maintained, and operated and shall be removed by the permittee when no longer required by the division.

(d) Surface water protection. In order to protect the hydrologic balance, underground mining activities shall be conducted according to the plan approved under 4VAC25-130-784.14(g), and the following:

(1) Surface water quality shall be protected by handling earth materials, groundwater discharges, and runoff in a manner that minimizes the formation of acidic or toxic drainage; prevents, to the extent possible using the best technology currently available, additional contribution of suspended solids to streamflow outside the permit area; and otherwise prevents water pollution. If drainage control, restabilization and revegetation of disturbed areas, diversion of runoff, mulching, or other reclamation and remedial practices are not adequate to meet the requirements of this section and 4VAC25-130-817.42, the permittee shall use and maintain the necessary water-treatment facilities or water quality controls.

(2) Surface water quantity and flow rates shall be protected by handling earth materials and runoff in accordance with the steps outlined in the plan approved under 4VAC25-130-784.14(g).

(e) Surface water monitoring.

(1) Surface water monitoring shall be conducted according to the surface water monitoring plan approved under 4VAC25-130-784.14(i). The division may require additional monitoring

when necessary.

(2) Surface water monitoring data shall be submitted every three months to the division or more frequently as prescribed by the division. Monitoring reports shall include analytical results from each sample taken during the reporting period. When the analysis of any surface water sample indicates noncompliance with the permit conditions, the permittee shall promptly notify the division and immediately take the actions provided for in 4VAC25-130-773.17(e) and 4VAC25-130-784.14(g). Reporting shall be in accordance with the National Pollutant Discharge Elimination System (NPDES) permit requirements.

(3) Surface water monitoring shall proceed through mining and continue during reclamation until bond release. Consistent with 4VAC25-130-774.13, the division may modify the monitoring requirements, in accordance with the NPDES permit, including the parameters covered and sampling frequency, if the permittee demonstrates, using the monitoring data obtained under this subdivision, that

(i) The operation has minimized disturbance to the hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses; and

(ii) Monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under 4VAC25-130-784.14(i).

(4) Equipment, structures, and other devices used in conjunction with monitoring the quality and quantity of surface water onsite and offsite shall be properly installed, maintained, and operated and shall be removed by the permittee when no longer required by the division.

(f) Acid- and toxic-forming materials.

(1) Drainage from acid- and toxic-forming materials and underground development waste into surface water and ground water shall be avoided by:

(i) Identifying and burying and/or treating, when necessary, materials which may adversely affect water quality, or be detrimental to vegetation or to public health and safety if not buried and/or treated; and

(ii) Storing materials in a manner that will protect surface water and ground water by preventing erosion, the formation of polluted runoff, and the infiltration of polluted water. Storage shall be limited to the period until burial and/or treatment first become feasible, and so long as storage will not result in any risk of water pollution or other environmental damage.

(2) Storage, burial or treatment practices shall be consistent with other material handling and disposal provisions of this chapter.

(g) Transfer of wells. Before final release of bond, exploratory or monitoring wells shall be sealed in a safe and environmentally sound manner in accordance with 4VAC25-130-817.13 and

4VAC25-130-817.15. With the prior approval of the division, wells may be transferred to another party, or retained by the permittee for further use. However, at a minimum, the conditions of such transfer shall comply with state and local laws and the permittee shall remain responsible for the proper management of the well until bond release in accordance with 4VAC25-130-817.13 through 4VAC25-130-817.15.

(h) Discharges into an underground mine.

(1) Discharges into an underground mine are prohibited, unless specifically approved by the division after a demonstration that the discharge will:

- (i) Minimize disturbance to the hydrologic balance on the permit area, prevent material damage outside the permit area and otherwise eliminate public hazards resulting from underground mining activities;
- (ii) Not result in a violation of applicable water quality standards or effluent limitations;
- (iii) Be at a known rate and quality which shall meet the effluent limitations of 4VAC25-130-817.42 for pH and total suspended solids, except that the pH and total suspended solids limitations may be exceeded, if approved by the division; and
- (iv) Meet with the approval of the Mine Safety and Health Administration.

(2) Discharges shall be limited to the following:

- (i) Water;
- (ii) Coal-processing waste;
- (iii) Fly ash from a coal-fired facility;
- (iv) Sludge from an acid-mine drainage treatment facility;
- (v) Flue-gas desulfurization sludge;
- (vi) Inert materials used for stabilizing underground mines; and
- (vii) Underground mine development wastes.

(3) Water from one underground mine may be diverted into other underground workings according to the requirements of this section.

(i) Gravity discharges from underground mines.

(1) Surface entries and accesses to underground workings shall be located and managed to prevent or control gravity discharge of water from the mine. Gravity discharges of water from an underground mine, other than a drift mine subject to subdivision (i)(2) of this section, may be allowed by the division if it is demonstrated that the untreated or treated discharge complies with the performance standards of this part and any additional NPDES permit requirements.

(2) Notwithstanding anything to the contrary in subdivision (i)(1) of this section, the surface entries and accesses of drift mines first used after December 15, 1981, or the implementation

of a federal lands program in accordance with Part 740 of this chapter, and located in acid-producing or iron-producing coal seams shall be located in such a manner as to prevent any gravity discharge from the mine.

(3) Except where surface entries and accesses to underground workings are located pursuant to subdivision (i)(1) of this section, an unmined barrier of coal shall be left in place where the coal seam dips toward the land surface. The unmined barrier and associated overburden shall be designed to prevent the sudden release of water that may accumulate in the underground workings.

(i) The applicant may demonstrate the appropriate barrier width and overburden height by either:

(A) Providing a site specific design, certified by a licensed professional engineer, which considers the overburden and barrier characteristics; or

(B) Providing the greater of an unmined horizontal barrier width necessary to leave a minimum of 100 feet of vertical overburden, or an unmined barrier width calculated by the formula: $W=50 + H$, when W is the minimum width in feet and H is the calculated hydrostatic head in feet.

(ii) An exception to the barrier requirement may be approved provided the division finds, based upon the geologic and hydrologic conditions, an accumulation of water in the underground workings cannot reasonably be expected to occur or other measures taken by the applicant are adequate to prevent the accumulation of water.

(j) Drinking, domestic or residential water supply. The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the division received the permit application for the activities causing the loss, contamination or interruption. The baseline hydrologic information required in 4VAC25-130-784.14 and the geologic information concerning baseline hydrologic conditions required in 4VAC25-130-784.22 will be used to determine the impact of mining activities upon the water supply.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.41, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 13, Issue 11, eff. March 19, 1997; Volume 14, Issue 5, eff. December 24, 1997.

4VAC25-130-817.42. Hydrologic balance; water quality standards and effluent limitations.

Discharges of water from areas disturbed by underground mining activities shall be made in compliance with all applicable State and Federal water quality laws, standards and regulations and with the effluent limitations for coal mining promulgated by the U.S. Environmental Protection Agency set forth in 40 CFR 434.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.42, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-817.43. Diversions.

(a) General requirements.

(1) With the approval of the division, any flow from mined areas abandoned before May 3, 1978, and any flow from undisturbed areas or reclaimed areas, after meeting the criteria of 4VAC25-130-817.46 for siltation structure removal, may be diverted from disturbed areas by means of temporary or permanent diversions. All diversions shall be designed to minimize adverse impacts to the hydrologic balance within the permit and adjacent areas, to prevent material damage outside the permit area and to assure the safety of the public. Diversions shall not be used to divert water into underground mines without approval of the division in accordance with 4VAC25-130-817.41(h).

(2) The diversion and its appurtenant structures shall be designed, located, constructed, and maintained to-

- (i) Be stable;
- (ii) Provide protection against flooding and resultant damage to life and property;
- (iii) Prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow outside the permit area; and
- (iv) Comply with all applicable local, State, and Federal laws and regulations.

(3) Temporary diversions shall be removed when no longer needed to achieve the purpose for which they were authorized. The land disturbed by the removal process shall be restored in accordance with this Part. Before diversions are removed, downstream water treatment facilities previously protected by the diversion shall be modified or removed, as necessary to prevent overtopping or failure of the facilities. This requirement shall not relieve the permittee from maintaining water treatment facilities as otherwise required. A permanent diversion or a stream channel reclaimed after the removal of a temporary diversion shall be designed and constructed so as to restore or approximate the premining characteristics of the

original stream channel including the natural riparian vegetation to promote the recovery and the enhancement of the aquatic habitat.

(4) Diversions which convey water continuously or frequently shall be designed by a qualified registered professional engineer and constructed to ensure stability and compliance with the standards of this Part and any other criteria set by the division.

(5) Channel side slopes shall be no steeper than 1.5h:1v in soil.

(6) Adequate freeboard shall be provided to prevent overtopping. A minimum of 0.3 feet shall be included, with additional freeboard provided at curves, transitions, and other critical sections as required.

(7) When rock rip rap lining is used, consideration shall be given to rip rap size, bedding, and filter material. Rock used for rip rap shall be non-degradable, and non-acid forming such as natural sand and gravel, sandstone or limestone. No clay, shale, or coal shall be used.

(8) Sediment and other debris shall be removed and the diversion maintained to provide the design requirements throughout its operation.

(9) The division may specify other criteria for diversions to meet the requirements of this section.

(b) Diversion of perennial and intermittent streams.

(1) Diversion of perennial and intermittent streams within the permit area may be approved by the division after making the finding relating to stream buffer zones called for in 4VAC25-130-817.57 that the diversions will not adversely affect the water quantity and quality and related environmental resources of the stream.

(2) The design capacity of channels for temporary and permanent stream channel diversions shall be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream from the diversion.

(3) The requirements of Paragraph (a)(2)(ii) of this section shall be met when the temporary and permanent diversions for perennial and intermittent streams are designed so that the combination of channel, bank and flood-plain configuration is adequate to pass safely the peak runoff of a 10-year, 6-hour precipitation event for a temporary diversion and a 100-year, 6-hour precipitation event for a permanent diversion.

(4) The design and construction of all stream channel diversions of perennial and intermittent streams shall be certified by a qualified registered professional engineer as meeting the standards of this Part and any other criteria set by the division.

(5) Channels which are constructed in backfilled material shall be formed during the backfilling and grading of the area. Unless the backfill material is of sufficiently low permeability, the channel shall be lined to prevent saturation of the backfill, loss of stream flow, or degradation of groundwater quality.

(6) Rock rip rap lining shall be placed in the channels of all diversions of perennial and intermittent streams to the normal flow depth, including adequate freeboard. Channels constructed in competent bedrock need not be rip rap lined.

(c) Diversion of miscellaneous flows.

(1) Miscellaneous flows, which consist of all flows except for perennial and intermittent streams, may be diverted away from disturbed areas if required or approved by the division. Miscellaneous flows shall include ground-water discharges and ephemeral streams.

(2) The design, location, construction, maintenance, and removal of diversions of miscellaneous flows shall meet all of the performance standards set forth in Paragraph (a) of this section.

(3) The requirements of Paragraph (a)(2)(ii) of this section shall be met when the temporary and permanent diversions for miscellaneous flows are designed to pass safely the peak runoff of a 2-year, 6-hour precipitation event for a temporary diversion and a 10-year, 6-hour precipitation event for a permanent diversion.

(d) Steep slope water conveyances.

(1) A steep slope conveyance, including but not limited to a rock rip rap flume, concrete flume, or a pipe, shall be used to convey water down steep slopes to stable natural or constructed drainways. Steep slope conveyances shall be constructed at locations where concentrated flows may cause erosion.

(2) The capacity of the conveyance shall be equal to or greater than the capacity of the inlet ditch or drainage structure associated with it.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.43, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 25, Issue 12, eff. March 18, 2009.

4VAC25-130-817.45. Hydrologic balance; sediment control measures.

(a) Appropriate sediment control measures shall be designed, constructed, and maintained using the best technology currently available to:

(1) Prevent, to the extent possible, additional contributions of sediment to stream flow or to runoff outside the permit area;

(2) Meet the more stringent of applicable State or Federal effluent limitations;

(3) Minimize erosion to the extent possible.

(b) Sediment control measures include practices carried out within and adjacent to the disturbed area. The sedimentation storage capacity of practices in and downstream from the disturbed areas shall reflect the degree to which successful mining and reclamation techniques are applied to reduce erosion and control sediment. Sediment control measures consist of the utilization of proper mining and reclamation methods and sediment control practices, singly or in combination. Sediment control methods include but are not limited to-

- (1) Disturbing the smallest practicable area at any one time during the mining operation through progressive backfilling, grading, and prompt revegetation as required in 4VAC25-130-817.111(b);
- (2) Stabilizing the backfilled material to promote a reduction of the rate and volume of runoff in accordance with the requirements of 4VAC25-130-817.102;
- (3) Retaining sediment within disturbed areas;
- (4) Diverting runoff away from disturbed areas;
- (5) Diverting runoff using protected channels or pipes through disturbed areas so as not to cause additional erosion;
- (6) Using straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment;
- (7) Treating with chemicals; and
- (8) Treating mine drainage in underground sumps.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.45, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-817.46. Hydrologic balance; siltation structures.

(a) For the purposes of this section only "disturbed area" shall not include those areas—

- (1) In which the only underground mining activities include diversion ditches, siltation structures, or roads that are designed, constructed and maintained in accordance with this Part; and
- (2) For which the upstream area is not otherwise disturbed by the operator.

(b) General requirements.

- (1) Additional contributions of suspended solids and sediment to streamflow or runoff outside the permit area shall be prevented to the extent possible using the best technology currently

available.

(2) All surface drainage from the disturbed area shall be passed through a siltation structure before leaving the permit area, except as provided in paragraph (b)(5) or (e) of this section.

(3) Siltation structures for an area shall be constructed before beginning any underground mining activities in that area and, upon construction, shall be certified by a qualified registered professional engineer to be constructed as designed and as approved in the reclamation plan.

(4) Any siltation structure which impounds water shall be designed, constructed and maintained in accordance with 4VAC25-130-817.49.

(5) Siltation structures shall be maintained until removal is authorized by the division and the disturbed area has been stabilized and revegetated. In no case shall the structure be removed sooner than two years after the last augmented seeding.

(6) When the siltation structure is removed, any embankment material and all accumulated sediment shall be placed in designated disposal areas, and the land on which the siltation structure was located shall be regraded and revegetated in accordance with the reclamation plan and 4VAC25-130-817.111 through 4VAC25-130-817.116. Sedimentation ponds approved by the division for retention as permanent impoundments may be exempted from this requirement.

(7) Any point source discharge of water from underground workings to surface waters which does not meet the effluent limitations of 4VAC25-130-817.42 shall be passed through a siltation structure before leaving the permit area.

(c) Sedimentation ponds.

(1) Sedimentation ponds, when used, shall—

(i) Be used individually or in series;

(ii) Be located as near as possible to the disturbed area and out of perennial streams unless such location is approved by the division; and

(iii) Be designed, constructed, and maintained to—

(A) Provide adequate sediment storage volume and provide adequate detention time to allow the effluent from the ponds to meet state and federal effluent limitations;

(B) Have a minimum volume of 0.125 acre-feet per acre of disturbed area draining to it, of which 0.075 acre-feet per acre disturbed shall be sediment storage volume and the remainder shall be detention storage volume;

(C) Treat the 10-year, 24-hour precipitation event ("design event") unless a lesser design event is approved by the division based on terrain, climate, other site specific conditions and on a demonstration by the permittee that the effluent limitations of 4VAC25-130-817.42 will be met;

(D) Provide a nonclogging dewatering device adequate to maintain the detention time required under paragraphs (c)(1)(iii)(A) and (B) of this section;

(E) Minimize, to the extent possible, short circuiting;

(F) Provide periodic sediment removal sufficient to maintain adequate volume for the design event. The elevation corresponding to the sediment storage volume shall be determined and a bench mark set in the field from which this elevation can readily be established. Sediment shall be removed when its accumulation reaches the cleanout level or more frequently if the operation of the structure is impaired. Sediment removed shall be placed only in disposal areas identified and approved in the reclamation plan;

(G) Ensure against excessive settlement;

(H) Be free of sod, large roots, frozen soil, and acid- or toxic-forming coal-processing waste; and

(I) Be compacted properly.

(2) Spillways. A sedimentation pond shall include either a combination of principal and emergency spillways or a single spillway configured as specified in 4VAC25-130-817.49(a)(9).

(d) Other treatment facilities.

(1) Other treatment facilities shall be designed to treat the 10-year, 24-hour precipitation event unless a lesser design event is approved by the division based on terrain, climate, other site-specific conditions and a demonstration by the permittee that the effluent limitations of 4VAC25-130-817.42 will be met.

(2) Other treatment facilities shall be designed in accordance with the applicable requirements of paragraph (c) of this section.

(e) Exemptions. Exemptions to the requirements of this section may be granted if—

(1) The disturbed drainage area within the total disturbed area is small; and

(2) The permittee demonstrates that siltation structures and alternate sediment control measures are not necessary for drainage from the disturbed area to meet the effluent limitations under 4VAC25-130-817.42 and the applicable state and federal water quality standards for the receiving waters.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.46, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 15, Issue 6,

eff. January 6, 1999.

4VAC25-130-817.47. Hydrologic balance; discharge structures.

Discharge from sedimentation ponds, permanent and temporary impoundments, coal processing waste dams and embankments, and diversions shall be controlled, by energy dissipators, riprap channels, and other devices, where necessary, to reduce erosion, to prevent deepening or enlargement of stream channels, and to minimize disturbance of the hydrologic balance. Discharge structures shall be designed according to standard engineering design procedures.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.47, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-817.49. Impoundments.

(a) General requirements. The requirements of this subsection apply to both temporary and permanent impoundments.

(1) Impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210-VI-TR60, Oct. 1985), "Earth Dams and Reservoirs," 1985 shall comply with "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60 and the requirements of this section. The technical release is hereby incorporated by reference. Copies may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, Order No. PB87-157509/AS. Copies can be inspected at the OSM Headquarters Office, Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 660, 800 North Capitol Street, Washington, D.C. or at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington D.C.

(2) An impoundment meeting the size or other criteria of 30 CFR 77.216(a) shall comply with the requirements of 30 CFR 77.216 and this section.

(3) Design certification. The design of impoundments shall be certified by a qualified registered professional engineer as designed to meet the requirements of this Part using current, prudent engineering practices and any other criteria established by the division. The qualified registered professional engineer shall be experienced in the design and construction of impoundments.

(4) Stability.

(i) An impoundment meeting the SCS Class B or C criteria for dams in TR-60, or the size or

other criteria of 30 CFR 77.216(a) shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2.

(ii) Impoundments not included in paragraph (a)(4)(i) of this section, except for a coal mine waste impounding structure shall have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions. In lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3, earth embankments whose top widths are no less than 10 feet and whose embankment slopes are 2h:1v or flatter may be used provided that the permittee documents that a minimum static safety factor of 1.3 can be met using the graphical solution methods outlined in the "Bureau of Mines Report of Investigations/1981, RI 8564, Factor of Safety Charts for Estimating the Stability of Saturated and Unsaturated Tailings Pond Embankments, United States Department of Interior."

(5) Freeboard. Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. The minimum freeboard shall be one foot. Impoundments meeting the SCS Class B or C criteria for dams in TR-60 shall comply with the freeboard hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60.

(6) Foundation.

(i) Foundations and abutments for an impounding structure shall be stable during all phases of construction and operation and shall be designed based on adequate and accurate information on the foundation conditions. For an impoundment meeting the SCS Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a), foundation investigations, as well as any necessary laboratory testing of foundation material shall be performed to determine the design requirements for foundation stability.

(ii) All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability and minimize seepage. The pool area shall be cleared of all brush and trees unless the requirement is waived by the division.

(iii) The most impervious material available shall be used in the cutoff trench and center portion of the dam. If sandy or gravelly material is encountered, it shall be placed in the outer shell, preferably in the downstream portion of the dam.

(7) Slope protection. Slope protection shall be provided to protect against surface erosion at the site and protect against sudden drawdown.

(8) Vegetation. Faces of embankments and surrounding areas shall be vegetated, except that faces where water is impounded may be riprapped or otherwise stabilized in accordance with accepted design practices.

(9) Spillways. An impoundment shall include either a combination of principal and emergency

spillways or a single spillway configured as specified in paragraph (a)(9)(i) of this section, designed and constructed to safely pass the applicable design precipitation event specified in paragraph (a)(9)(ii) of this section, except as set forth in paragraph (c)(2) of this section.

(i) (A) The division may approve a single open-channel spillway that is:

(1) Of nonerodible construction and designed to carry sustained flows; or

(2) Earth- or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

(B) Temporary ponds that do not meet the size or other criteria of 30 CFR 77.216(a) and located where failure would not be expected to cause loss of life or serious property damage, may use a single spillway of the pipe and riser design if the riser is no less than 15 inches in diameter, the barrel is no less than 12 inches in diameter, and a properly designed anti-vortex device and trash rack are securely installed on top of the riser.

(ii) Except as specified in paragraph (c)(2) of this section, the required design precipitation event for an impoundment meeting the spillway requirements of paragraph (a)(9) of this section is:

(A) For an impoundment meeting the SCS Class B or C criteria for dams in TR-60, the emergency spillway hydrologic criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60 or greater event as specified by the division.

(B) For an impoundment meeting or exceeding the size or other criteria of 30 CFR 77.216(a), a 100-year six-hour event, or greater event as specified by the division.

(C) For an impoundment not included in paragraphs (a)(9)(ii)(A) and (B) of this section, a 25-year six-hour event, or greater event as specified by the division.

(10) Inspections. A qualified registered professional engineer or other qualified professional specialist under the direction of a professional engineer, shall inspect each impoundment as provided in paragraph (a)(10)(i) of this section. The professional engineer or specialist shall be experienced in the construction of impoundments.

(i) Inspections shall be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.

(ii) The qualified registered professional engineer shall, within two weeks after each inspection required in paragraph (a)(10)(i) of this section, provide to the division, a certified report that the impoundment has been constructed and/or maintained as designed and in accordance with the approved plan and this chapter. Construction certified in previous reports need not be recertified after each annual inspection. The report shall include discussion of any appearance of instability, structural weakness or other hazardous condition, depth and elevation of any impounded waters, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any

other aspects of the structure affecting stability.

(iii) A copy of the report shall be retained at or near the minesite.

(11) Examinations. Impoundments meeting the SCS Class B or C criteria for dams in TR-60, or the size of other criteria of 30 CFR 77.216 must be examined in accordance with 30 CFR 77.216-3. Impoundments not meeting the SCS Class B or C criteria for dams in TR-60, or subject to 30 CFR 77.216 shall be examined at least quarterly. A qualified person designated by the operator shall examine impoundments for appearance of structural weakness and other hazardous conditions.

(12) Emergency procedures. If any examination or inspection discloses that a potential hazard exists, the permittee shall promptly inform the division of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the division shall be notified immediately.

Notification shall be by the fastest available means and followed in writing. The division shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

(b) Permanent impoundments. A permanent impoundment of water may be created, if authorized by the division in the approved permit based upon the following demonstration:

(1) The size and configuration of such impoundment will be adequate for its intended purposes.

(2) The quality of impounded water will be suitable on a permanent basis for its intended use and, after reclamation, will meet applicable state and federal water quality standards, and discharges from the impoundment will meet applicable effluent limitations and will not degrade the quality of receiving water below applicable state and federal water quality standards.

(3) The water level will be sufficiently stable and be capable of supporting the intended use.

(4) Final grading will provide for adequate safety and access for proposed water users.

(5) The impoundment will not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(6) The impoundment will be suitable for the approved postmining land use.

(c) Temporary impoundments.

(1) The division may authorize the construction of temporary impoundments as part of underground mining activities.

(2) In lieu of meeting the requirements in paragraph (a)(9)(i) of this section, the division may approve an impoundment that relies primarily on storage to control the runoff from the design precipitation event when it is demonstrated by the operator and certified by a qualified

registered professional engineer or qualified registered professional land surveyor in accordance with 4VAC25-130-784.16(a) that the impoundment will safely control the design precipitation event, the water from which shall be safely removed in accordance with current, prudent, engineering practices. Such an impoundment shall be located where failure would not be expected to cause loss of life or serious property damage, except where:

(i) Impoundments meeting the SCS Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a) shall be designed to control the precipitation of the probable maximum precipitation of a six-hour event, or greater event as specified by the division; or

(ii) Impoundments included in paragraph (c)(2)(i) of this section shall be designed to control the precipitation of a 100-year six-hour event, or greater event as specified by the division.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.49, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 12, Issue 2, eff. November 15, 1995; Volume 15, Issue 6, eff. January 6, 1999.

4VAC25-130-817.56. Postmining rehabilitation of sedimentation ponds, diversions, impoundments, and treatment facilities.

Before abandoning a permit area or seeking bond release, the permittee shall ensure that all temporary structures are removed and reclaimed, and that all permanent sedimentation ponds, diversions, impoundments, and treatment facilities meet the requirements of this chapter for permanent structures, have been maintained properly, and meet the requirements of the approved reclamation plan for permanent structures and impoundments. The permittee shall renovate such structures if necessary to meet the requirements of this chapter and to conform to the approved reclamation plan.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.56, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-817.57. Hydrologic balance; stream buffer zones.

(a) No land within 100 feet of a perennial stream or an intermittent stream shall be disturbed by underground mining activities, unless the division specifically authorizes underground mining activities closer to, or through, such a stream. The division may authorize such activities only upon finding that -

(1) Underground mining activities will not cause or contribute to the violation of applicable State or Federal water quality standards and will not adversely affect the water quantity and quality or other environmental resources of the stream; and

(2) If there will be a temporary or permanent stream channel diversion, it will comply with 4VAC25-130-817.43.

(b) The area not to be disturbed shall be designated a buffer zone, and the permittee shall mark it as specified in 4VAC25-130-817.11.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.57, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-817.59. Coal recovery.

Underground mining activities shall be conducted so as to maximize the utilization and conservation of the coal, while utilizing the best technology currently available to maintain environmental integrity, so that re-affecting the land in the future through surface coal mining operations is minimized.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.59, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-817.61. Use of explosives; general requirements.

(a) Applicability. 4VAC25-130-817.61 through 4VAC25-130-817.68 apply to surface blasting activities incident to underground coal mining, including, but not limited to, initial rounds of slopes and shafts.

(b) Compliance with other laws. Each permittee shall comply with all applicable State and Federal laws and regulations in the use of explosives.

(c) Blasters.

- (1) All surface blasting operations incident to underground mining in the State shall be conducted under the direction of a certified blaster certified in accordance with Part 850.
- (2) Certificates of blaster certification shall be carried by blasters or shall be on file at the permit area during blasting operations.
- (3) A blaster and at least one other person shall be present at the firing of a blast.
- (4) Persons responsible for blasting operations at a blasting site shall be familiar with the blasting plan and site-specific performance standards.

(d) Blast design.

- (1) An anticipated blast design shall be submitted if blasting operations will be conducted within-
 - (i) 1,000 feet of any building used as a dwelling, public building, school, church or community or institutional building; or
 - (ii) 500 feet of active or abandoned underground mines.
- (2) The blast design may be presented as part of a permit application or at a time, before the blast, proposed in the application and approved by the division.
- (3) The blast design shall contain sketches of the drill patterns, delay periods, and decking and shall indicate the type and amount of explosives to be used, critical dimensions, and the location and general description of structures to be protected, as well as a discussion of design factors to be used, which protect the public and meet the applicable airblast, flyrock, and ground-vibration standards in 4VAC25-130-817.67.
- (4) The blast design shall be prepared and signed by a certified blaster.
- (5) The division may require changes to the design submitted.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.61, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-817.62. Use of explosives; preblasting survey.

- (a) At least 30 days before initiation of blasting, the permittee shall notify, in writing, all residents or owners of dwellings or other structures located within 1/2 mile of the permit area how to request a preblasting survey.
- (b) A resident or owner of a dwelling or structure within 1/2 mile of any part of the permit area

may request a preblasting survey. This request shall be made, in writing, directly to the permittee or to the division, who shall promptly notify the permittee. The permittee shall promptly conduct a preblasting survey of the dwelling or structure and promptly prepare a written report of the survey. An updated survey of any additions, modifications, or renovations shall be performed by the permittee if requested by the resident or owner. The request for an updated survey shall be in writing and describe the additions, modifications, or renovations which are to be surveyed.

(c) The permittee shall determine the condition of the dwelling or structure and shall document any preblasting damage and other physical factors that could reasonably be affected by the blasting. Structures such as pipelines, cables, transmission lines, and cisterns, wells, and other water systems warrant special attention; however, the assessment of these structures may be limited to surface conditions and other readily available data.

(d) The written report of the survey shall be signed by the person who conducted the survey. Copies of the report shall be promptly provided to the division and to the person requesting the survey. If the person requesting the survey disagrees with the contents and/or recommendations contained therein, he may submit to both the permittee and the division a detailed description of the specific areas of disagreement.

(e) Any surveys requested more than 10 days before the planned initiation of blasting shall be completed by the permittee before the initiation of blasting. Any surveys requested after permit approval but less than 10 days before the planned initiation of blasting shall be completed by the permittee within 30 days of the request, except that reasonable time extensions may be approved by the division.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.62, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-817.64. Use of explosives; general performance standards.

(a) The permittee shall notify, in writing, residents within 1/2 mile of the blasting site and local governments of the proposed times and locations of blasting operations. Such notice of times that blasting is to be conducted may be announced weekly, but in no case less than 24 hours before blasting will occur.

(b) Unscheduled blasts may be conducted only where public or permittee health and safety so requires and for emergency blasting actions. When a permittee conducts an unscheduled surface blast incidental to underground coal mining operations, the permittee, using audible signals, shall notify residents within 1/2 mile of the blasting site and document the reason in accordance with 4VAC25-130-817.68 (p).

(c) All blasting shall be conducted during daylight hours. The division may specify more restrictive time periods for blasting.

(d) Seismic monitoring shall be conducted when blasting operations on coal surface mining operations are conducted within 1,000 feet of a private dwelling or other occupied building.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.64, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 23, Issue 13, eff. April 4, 2007.

4VAC25-130-817.66. Use of explosives; blasting signs, warnings, and access control.

(a) Blasting signs. Blasting signs shall meet the specifications of 4VAC25-130-817.11.

(b) Warnings. Warning and all-clear signals of different character or pattern that are audible within a range of ½ mile from the point of the blast shall be given. Each person within the permit area and each person who resides or regularly works within ½ mile of the permit area shall be notified of the meaning of the signals in the blasting notification required in 4VAC25-130-817.64(a).

(c) Access control. Access within the blasting area shall be controlled to prevent presence of livestock or unauthorized persons during blasting and until an authorized representative of the permittee has reasonably determined that-

- (1) No unusual hazards, such as imminent slides or undetonated charges, exist; and
- (2) Access to and travel within the blasting area can be safely resumed.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.66, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-817.67. Use of explosives; control of adverse effects.

(a) General requirements. Blasting shall be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of surface or ground water outside the permit area.

(b) Airblast.

(1) Limits.

(i) Airblast shall not exceed the maximum limits listed below at the location of any dwelling, public building, school, church, or community or institutional building outside

the permit area, except as provided in Paragraph (e) of this section.

Lower frequency limit of measuring system, in Hz (+3 dB)	Maximum level, in dB
0.1 Hz or lower - flat response ¹	134 peak
2 Hz or lower - flat response	133 peak
6 Hz or lower - flat response	129 peak
C-weighted - slow response ¹	105 peak dBC

¹Only when approved by the division

(ii) If necessary to prevent damage, the division may specify lower maximum allowable airblast levels than those of Paragraph (b)(1)(i) of this section for use in the vicinity of a specific blasting operation.

(2) Monitoring.

(i) The permittee shall conduct periodic monitoring to ensure compliance with the airblast standards. The division may require airblast measurement of any or all blasts and may specify the locations at which such measurements are taken.

(ii) The measuring systems used shall have an upper-end flat-frequency response of at least 200 Hz.

(c) Flyrock. Flyrock traveling in the air or along the ground shall not be cast from the blasting site-

- (1) More than one-half the distance to the nearest dwelling or other occupied structure;
- (2) Beyond the area of control required under 4VAC25-130-817.66(c); or
- (3) Beyond the permit boundary.

(d) Ground vibration.

(1) General. In all blasting operations, except as otherwise authorized in Paragraph (e) of this section, the maximum ground vibration shall not exceed the values approved by the division. The maximum ground vibration for protected structures listed in Paragraph (d)(2)(i) of this section shall be established in accordance with either the maximum peak-particle-velocity limits of Paragraph (d)(2), the scaled-distance equation of Paragraph (d)(3), the blasting-level chart of Paragraph (d)(4), or by the division under Paragraph (d)(5) of this section. All structures in the vicinity of the blasting area, not listed in Paragraph (d)(2)(i) of this section, such as water towers, pipelines and other utilities, tunnels, dams, impoundments, and underground mines shall be protected from damage by establishment of a maximum allowable limit on the ground vibration, submitted by the permittee and approved by the division before the initiation of blasting.

(2) Maximum peak-particle velocity.

(i) The maximum ground vibration shall not exceed the following limits at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area:

Distance (D), from the blasting site, in feet	Maximum allowable peak particle velocity (Vmax) for ground vibration, in seismic inches/second ¹	Scaled distance factor to be applied without seismic monitoring ² (D _s)
0 to 300	1.25	50
301 to 5,000	1.00	55
5,001 and beyond	0.75	65

¹Ground vibration shall be measured as the particle velocity. Particle velocity shall be recorded in three mutually perpendicular directions. The maximum allowable peak particle velocity shall apply to each of the three measurements.

²Applicable to the scaled-distance equation of Paragraph (d)(3)(i) of this section.

(ii) A seismographic record shall be provided for each blast.

(3) Scaled-distance equation.

(i) The permittee may use the scaled-distance equation, $W=(D/D_s)^2$, to determine the allowable charge weight of explosives to be detonated in any 8-millisecond period, without seismic monitoring; where W=the maximum weight of explosives, in pounds; D=the distance, in feet, from the blasting site to the nearest protected structure; and D_s=the scaled-distance factor, which may initially be approved by the division using the values for scaled-distance factor listed in Paragraph (d)(2)(i) of this section.

(ii) The development of a modified scaled-distance factor may be authorized by the division on receipt of a written request by the permittee, supported by seismographic records of blasting at the minesite. The modified scaled-distance factor shall be determined such that the particle velocity of the predicted ground vibration will not exceed the prescribed maximum allowable peak particle velocity of Paragraph (d)(2)(i) of this section, at a 95-percent confidence level.

(4) Blasting-level chart.

(i) The permittee may use the ground vibration limits in Figure 1 to determine the maximum allowable ground vibration.

(ii) If the Figure 1 limits are used, a seismographic record including both particle velocity and vibration-frequency levels shall be provided for each blast. The method for the analysis of the predominant frequency contained in the blasting records shall be approved

by the division before application of this alternative blasting criterion.

(5) The maximum allowable ground vibration shall be reduced by the division below the limits otherwise provided by this section, if determined necessary to provide damage protection.

(6) The division may require the permittee to conduct seismic monitoring of any or all blasts and may specify the location at which the measurements are taken and the degree of detail necessary in the measurement.

(e) The maximum airblast and ground-vibration standards of Paragraphs (b) and (d) of this section shall not apply at the following locations:

(1) At structures owned by the permittee and not leased to another person.

(2) At structures owned by the permittee and leased to another person, if a written waiver by the lessee is submitted to the division before blasting.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.67, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-817.68. Use of explosives; records of blasting operations.

The permittee shall retain a record of all blasts for at least 3 years. Upon request, copies of these records shall be made available to the division and to the public for inspection. Such records shall contain the following data:

(a) Name of the permittee conducting the blast.

(b) Location, date, and time of the blast.

(c) Name, signature, and certification number of the blaster conducting the blast.

(d) Identification, direction, and distance, in feet, from the nearest blast hole to the nearest dwelling, public building, school, church, community or institutional building outside the permit area, except those described in 4VAC25-130-817.67(e).

(e) Weather conditions, including those which may cause possible adverse blasting effects.

(f) Type of material blasted.

(g) Sketches of the blast pattern including number of holes, burden, spacing, decks, and delay pattern.

(h) Diameter and depth of holes.

(i) Types of explosives used.

- (j) Total weight of explosives used per hole.
- (k) The maximum weight of explosives detonated in an 8-millisecond period.
- (l) Initiation system.
- (m) Type and length of stemming.
- (n) Mats or other protections used.
- (o) Seismographic and airblast records, if required, which shall include-
 - (1) Type of instrument, sensitivity, and calibration signal or certification of annual calibration;
 - (2) Exact location of instrument and the date, time, and distance from the blast;
 - (3) Name of the person and firm taking the reading;
 - (4) Name of the person and firm analyzing the seismographic record; and
 - (5) The vibration and/or airblast level recorded.
- (p) Reasons and conditions for each unscheduled blast.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.68, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-817.71. Disposal of excess spoil; general requirements.

- (a) General. Excess spoil shall be placed in designated disposal areas within the permit area, in a controlled manner to-
 - (1) Minimize the adverse effects of leachate and surface water runoff from the fill on surface and ground waters;
 - (2) Ensure mass stability and prevent mass movement during and after construction; and
 - (3) Ensure that the final fill is suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use.
- (b) Design certification.
 - (1) The fill and appurtenant structures shall be designed using current, prudent engineering practices and any criteria established by the division as necessary to achieve the standards of this Part. A qualified registered professional engineer experienced in the design of earth and rock fills shall certify the design of the fill and appurtenant structures.

(2) The fill shall be designed to attain a minimum long-term static safety factor of 1.5. The foundation and abutments of the fill must be stable under all conditions of construction.

(c) Location. The disposal area shall be located on the most moderately sloping and naturally stable areas available, as approved by the division, and shall be placed, where possible, upon or above a natural terrace, bench, or berm, if such placement provides additional stability and prevents mass movement.

(d) Foundation.

(1) Sufficient foundation investigations, as well as any necessary laboratory testing of foundation material, shall be performed in order to determine the design requirements for foundation stability. The analyses of foundation conditions shall take into consideration the effect of underground mine workings, if any, upon the stability of the fill and appurtenant structures.

(2) When the slope in the disposal area is in excess of 2.8h:1v (36 percent), or such lesser slope as may be designated by the division based on local conditions, keyway cuts (excavations to stable bedrock) or rock toe buttresses shall be constructed to ensure stability of the fill. Where the toe of the spoil rests on a downslope, stability analyses shall be performed in accordance with 4VAC25-130-784.19 to determine the size of rock toe buttresses and keyway cuts.

(e) Placement of excess spoil.

(1) All vegetative and organic materials shall be removed from the disposal area prior to placement of excess spoil. Topsoil shall be removed, segregated and stored or redistributed in accordance with 4VAC25-130-817.22. If approved by the division, organic material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation or increase the moisture retention of the soil.

(2) Excess spoil shall be transported and placed in a controlled manner in horizontal lifts not exceeding 4 feet in thickness; concurrently compacted as necessary to ensure mass stability and to prevent mass movement during and after construction; graded so that surface and subsurface drainage is compatible with the natural surroundings; and covered with topsoil or substitute material in accordance with 4VAC25-130-817.22. The division may approve a design which incorporates placement of excess spoil in horizontal lifts greater than 4 feet in thickness when it is demonstrated by the permittee and certified by a qualified registered professional engineer that the design will ensure the stability of the fill and will meet all other applicable requirements.

(3) The final configuration of the fill shall be suitable for the approved postmining land use. Terraces may be constructed on the outslope of the fill if required for stability, control of erosion, to conserve soil moisture, or to facilitate the approved postmining land use. The grade of the outslope between terrace benches shall not be steeper than 2h:1v (50 percent). Terraces, if constructed, shall be no less than 20 feet in width and the vertical distance between terraces shall not exceed 50 feet. Terraces on the fill shall be graded with a minimum

3.0% grade toward the fill and a minimum 1.0% slope toward the drainage control system.

(4) No permanent impoundments are allowed on the completed fill. Small depressions may be allowed by the division if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation; and if they are not incompatible with the stability of the fill.

(5) Excess spoil that is acid- or toxic-forming or combustible shall be adequately covered with nonacid, nontoxic and noncombustible material, or treated, to control the impact on surface and ground water in accordance with 4VAC25-130-817.41, to prevent sustained combustion, and to minimize adverse effects on plant growth and the approved postmining land use.

(f) Drainage control.

(1) If the disposal area contains springs, natural or manmade water courses, or wet weather seeps, the fill design shall include diversions and underdrains as necessary to control erosion, prevent water infiltration into the fill, and ensure stability.

(2) Diversions shall comply with the requirements of 4VAC25-130-817.43.

(3) Underdrains shall consist of durable rock or pipe, be designed and constructed using current, prudent engineering practices and any design criteria established by the division as necessary to achieve the standards of this Part. The underdrain system shall be designed to carry the anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area and shall be protected from piping and contamination by an adequate filter. Rock underdrains shall be constructed of durable, nonacid-, nontoxic-forming rock (e.g., natural sand and gravel, sandstone, limestone, or other durable rock) that does not slake in water or degrade to soil material, and which is free of coal, clay or other nondurable material. Perforated pipe underdrains shall be corrosion resistant and shall have characteristics consistent with the long-term life of the fill.

(g) Surface area stabilization. Slope protection shall be provided to minimize surface erosion at the site. All disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.

(h) Inspections. A qualified registered professional engineer or other qualified professional specialist under the direction of the professional engineer, shall periodically inspect the fill during construction. The professional engineer and specialist shall be experienced in the construction of earth and rock fills.

(1) Such inspections shall be made at least quarterly throughout construction and during critical construction periods. Critical construction periods shall include at a minimum: (i) Foundation preparation, including the removal of all organic material and topsoil; (ii) placement of underdrains and protective filter systems; (iii) installation of final surface drainage systems; and (iv) the final graded and revegetated fill. Regular inspections by the engineer or specialist shall also be conducted during placement and compaction of fill materials.

(2) The qualified registered professional engineer shall provide a certified report to the division within two weeks after each inspection that the fill has been constructed and maintained as designed and in accordance with the approved plan and this chapter. The report shall include appearances of instability, structural weakness, and other hazardous conditions.

(3)(i) The certified report on the drainage system and protective filters shall include color photographs taken during and after construction, but before underdrains are covered with excess spoil. If the underdrain system is constructed in phases, each phase shall be certified separately.

(ii) Where excess durable rock spoil is placed in single or multiple lifts such that the underdrain system is constructed simultaneously with excess spoil placement by the natural segregation of dumped materials, in accordance with 4VAC25-130-817.73, color photographs shall be taken of the underdrain as the underdrain system is being formed.

(iii) The photographs accompanying each certified report shall be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site.

(4) A copy of each inspection report shall be retained at or near the mine site.

(i) Coal mine waste. Coal mine waste may be disposed of in excess spoil fills if approved by the division and, if such waste is-

(1) Placed in accordance with 4VAC25-130-817.83;

(2) Nontoxic and nonacid forming; and

(3) Of the proper characteristics to be consistent with the design stability of the fill.

(j) Underground disposal. Excess spoil may be disposed of in underground mine workings, but only in accordance with a plan approved by the division and MSHA under 4VAC25-130-784.25.

(k) Face-up operations. Spoil resulting from face-up operations for underground coal mine development may be placed at drift entries as part of a cut and fill structure, if the structure is less than 400 feet in horizontal length, and designed in accordance with 4VAC25-130-817.71.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.71, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-817.72. Disposal of excess spoil; valley fills/head-of-hollow fills.

Valley fills and head-of-hollow fills shall meet the requirements of 4VAC25-130-817.71 and the

additional requirements of this section.

(a) Drainage control.

(1) The top surface of the completed fill shall be graded such that the final slope after settlement will be toward properly designed drainage channels. Uncontrolled surface drainage may not be directed over the outslope of the fill. The maximum slope of the top of the fill shall be 20h:1v (5.0%).

(2) Runoff from areas above the fill and runoff from the surface of the fill shall be diverted into stabilized diversion channels designed to meet the requirements of 4VAC25-130-817.43 and to safely pass the runoff from a 100-year, 6-hour precipitation event. The appropriate surface drainage system shall be installed prior to placement of excess spoil in the fill area. Temporary diversions may be approved by the division for use during fill construction provided that erosion is minimized and no threat to the public or the environment results.

(3)(i) A subdrainage system, constructed in accordance with 4VAC25-130-817.71(f)(3), shall be installed along the natural drainage system, extending from the toe to the head of the fill. The division may approve a lesser distance provided the standards of 4VAC25-130-817.71(f)(3) are met. A system of lateral underdrains shall connect this core to each area of potential drainage or seepage in the disposal area.

(ii) A filter system to ensure the proper long-term functioning of the subdrainage system shall be designed and constructed using current, prudent engineering practices.

(iii) The minimum size of the main underdrain shall be:

Total Amount of Fill Material	Predominant Type of Fill	Minimum Size of Drain, in Feet	
		Width	Height
Less than 1,000,000 Cubic Yards	Do:	Sandstone	10
4 Shale	16	8	More than 1,000,000 Cubic Yards
Do:	Sandstone	16	8 Shale

(iv) No more than 10 percent of the rock used in the underdrains may be less than 12 inches in size and no single rock may be larger than 25 percent of the width of the drain.

(v) Alternatives to the minimum sizes may be approved by the division provided the alternative is shown to convey, using accepted engineering analyses, the maximum anticipated discharge, including an appropriate factor of safety.

(b) Rock-core chimney drains. A rock-core chimney drain may be used in a head-of-hollow fill, instead of the underdrain and surface diversion system normally required, as long as the fill is not located in an area containing intermittent or perennial streams. A rock-core chimney drain may be used in a valley fill if the fill does not exceed 250,000 cubic yards of material and

upstream drainage is diverted around the fill. The alternative rock-core chimney drain system shall be incorporated into the design and construction of the fill as follows:

(1) The fill shall have, along the vertical projection of the main buried stream channel or rill, a vertical core of durable rock at least 16 feet thick which shall extend from the toe of the fill to the head of the fill, and from the base of the fill to the surface of the fill. A system of lateral rock underdrains shall connect this rock core to each area of potential drainage or seepage in the disposal area. The underdrain system and rock core shall be designed to carry the anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area. Rocks used in the rock core and underdrains shall meet the requirements of 4VAC25-130-817.71(f).

(2) A filter system to ensure the proper long-term functioning of the rock core shall be designed and constructed using current, prudent engineering practices.

(3) Grading may drain surface water away from the outslope of the fill and toward the rock core. In no case, however, may intermittent or perennial streams be diverted into the rock core. The maximum slope of the top of the fill shall be 33h:1v (3.0%). A drainage pocket may be maintained at the head of the fill during and after construction, to intercept surface runoff and discharge the runoff through or over the rock drain, if stability of the fill is not impaired. In no case shall this pocket or sump have a potential capacity for impounding more than 10,000 cubic feet of water. Terraces on the fill shall be graded with a minimum 3.0% grade toward the fill and a minimum 1.0% slope toward the rock core.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.72, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-817.73. Disposal of excess spoil; durable rock fills.

The division may approve the alternative method of disposal of excess durable rock spoil by gravity placement in single or multiple lifts, provided the following conditions are met:

(a) Except as provided in this section, the requirements of 4VAC25-130-817.71 are met.

(b) The excess spoil consists of at least 80 percent, by volume, durable, nonacid- and nontoxic-forming rock (e.g., sandstone or limestone) that does not slake in water and will not degrade to soil material. Where used, noncemented clay shale, clay spoil, soil or other nondurable excess spoil material shall be mixed with excess durable rock spoil in a controlled manner such that no more than 20 percent of the fill volume, as determined by tests performed by a registered engineer and approved by the division, is not durable rock.

(c) A qualified registered professional engineer certifies that the design will ensure the

stability of the fill and meet all other applicable requirements.

(d) The fill is designed to attain a minimum long-term static safety factor of 1.5, and an earthquake safety factor of 1.1.

(e) The underdrain system may be constructed simultaneously with excess spoil placement by the natural segregation of dumped materials, provided the resulting underdrain system is capable of carrying anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area and the other requirements for drainage control are met.

(f) Surface water runoff from areas adjacent to and above the fill is not allowed to flow onto the fill and is diverted into stabilized diversion channels designed to meet the requirements of 4VAC25-130-817.43 and to safely pass the runoff from a 100-year, 6-hour precipitation event. The appropriate surface drainage system shall be installed prior to placement of excess spoil in the fill area. Temporary diversions may be approved by the division for use during fill construction, provided that erosion is minimized and no threat to the public or the environment results.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.73, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-817.74. Disposal of excess spoil; preexisting benches.

(a) The division may approve the disposal of excess spoil through placement on preexisting benches if the affected portion of the preexisting bench is permitted and the standards set forth in 4VAC25-130-817.102(c), (e) through (h) and (j) and the requirements of this section are met.

(b) All vegetation and organic materials shall be removed from the affected portion of the preexisting bench prior to placement of the excess spoil. Any available topsoil on the bench shall be removed, stored, and redistributed in accordance with 4VAC25-130-817.22. Substitute or supplemental materials may be used in accordance with 4VAC25-130-817.22(b).

(c) The fill shall be designed and constructed using current, prudent engineering practices. The design will be certified by a registered professional engineer. The spoil shall be placed on the solid portion of the bench in a controlled manner and concurrently compacted as necessary to attain a long-term safety factor of 1.3 for all portions of the fill. Any spoil deposited on any fill portion of the bench will be treated as excess spoil fill under 4VAC25-130-817.71.

(d) The preexisting bench shall be backfilled and graded to—

- (1) Achieve the most moderate slope possible which does not exceed the angle of repose;
- (2) Eliminate the highwall to the maximum extent technically practical;

- (3) Minimize erosion and water pollution both on and off the site; and
- (4) If the disposal area contains springs, natural or manmade water courses, or wet weather seeps, the fill design shall include diversions and underdrains as necessary to control erosion, prevent water infiltration into the fill, and ensure stability.
- (e) All disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.
- (f) Permanent impoundments may not be constructed on preexisting benches backfilled with excess spoil under this regulation.
- (g) Final configuration of the backfill must be compatible with the natural drainage patterns and the surrounding area, and support the approved postmining land use.
- (h) Disposal of excess spoil from an upper actively mined bench to a lower preexisting bench by means of gravity transport may be approved by the division provided that—
- (1) The gravity transport courses are determined on a site specific basis by the permittee as part of the permit application and approved by the division to minimize hazards to health and safety and to ensure that damage will be minimized between the benches, outside the set course, and downslope of the lower bench should excess spoil accidentally move;
 - (2) All gravity transported excess spoil, including that excess spoil immediately below the gravity transport courses and any preexisting spoil that is disturbed, is rehandled and placed in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and to prevent mass movement, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings and to ensure a minimum long-term static safety factor of 1.3. Excess spoil on the bench prior to the current mining operation that is not disturbed need not be rehandled except where necessary to ensure stability of the fill;
 - (3) A safety berm is constructed on the solid portion of the lower bench prior to gravity transport of the excess spoil. Where there is insufficient material on the lower bench to construct a safety berm, only that amount of excess spoil necessary for the construction of the berm may be gravity transported to the lower bench prior to construction of the berm;
 - (4) Excess spoil shall not be allowed on the downslope below the upper bench except on designated gravity transport courses properly prepared according to 4VAC25-130-817.22. Upon completion of the fill, no excess spoil shall be allowed to remain on the designated gravity transport course between the two benches and each transport course shall be reclaimed in accordance with the requirements of this Part.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.74, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July

17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 15, Issue 6, eff. January 6, 1999.

4VAC25-130-817.75. Disposal of excess spoil; zoned concept.

The disposal of spoil under the zoned concept shall meet the requirements of 4VAC25-130-817.71 and the additional requirements of this section.

- (a) The fill and appurtenant structures shall be designed using current, prudent engineering practices, and certified by a qualified registered professional engineer experienced in the design of earth and rockfill embankments.
- (b) The fill shall be designed to attain a long-term minimum safety factor of 1.5 under static loading conditions and 1.1 under earthquake loading conditions.
- (c) All vegetative and organic material and topsoil in the structural and nonstructural zones shall be removed from the disposal area prior to placement of excess spoil. Topsoil shall be removed, segregated and stored or redistributed in accordance with 4VAC25-130-817.22. If approved by the division, organic material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation, or increase the moisture retention of the soil.
- (d) Excess spoil shall be transported and placed in a specified controlled manner as follows:
 - (1) Structural zone. In the structural zone, spoil shall be placed in horizontal lifts and compacted to densities and strengths required to ensure mass stability and prevent mass movement. The lift thickness and gradational requirements of the spoil shall be consistent with the design parameters. The extent of this zone shall be based on accepted engineering analyses.
 - (2) Nonstructural zone. In the nonstructural zone, the spoil shall be placed in a controlled manner to avoid contamination of the internal drainage system and to ensure mass stability and prevent mass movement, to provide for the safety of persons on or near the fill, and to provide mass stability and prevent mass movement during construction. The extent of this zone shall be determined by accepted engineering analyses. The temporary outside slope of the nonstructural zone shall not exceed the angle of repose and the height of the nonstructural zone shall be limited to a height determined not to pose an actual or probable hazard to property, public health and safety, or the environment in the event of failure during construction.
 - (3) The structural zone and the nonstructural zone shall be constructed as concurrently as practicable and the distance between the structural zone and the nonstructural zone shall be minimized to assure proper stability and control of the temporary fill slope.
- (e) In addition to the inspection requirements of 4VAC25-130-817.71(h), regular inspections by the engineer or specialist shall be conducted during placement and compaction of fill materials in both the structural and non-structural zones.

(f) The design of the fill shall include an internal drainage system which will ensure continued free drainage of anticipated seepage from precipitation and from springs or wet weather seeps.

(1) Anticipated discharge from springs and seeps and due to precipitation shall be based on records and/or field investigations to determine seasonal variation. The design of the internal drainage system shall be based on the maximum anticipated discharge.

(2) Underdrains constructed of granular material shall consist of durable, nonacid-, nontoxic-forming material such as natural sand and gravel, sandstone, or other durable rock that does not slake in water or degrade to soil material, and which is free of coal, clay, shale, or other nondurable material.

(3) A filter system shall be included to insure proper functioning of the underdrain system. This filter shall be designed and constructed using current geotechnical engineering methods.

(4) In constructing the underdrains, no more than 10 percent of the rock shall be less than 12 inches in size and no single rock may be larger than 25 percent of the width of the drain.

(5) The drain size shall be designed to safely route the anticipated seepage flows. Minimum drain sizes shall be six feet wide and two feet high.

(6) Prior to placing the underdrain materials, all vegetation and topsoil shall be removed.

(7) The internal drainage system shall be designed to assure that the phreatic surface within the structural zone is controlled.

(8) The internal drainage system shall be designed to prevent channeling of surface runoff through the underdrains.

(g) Surface water runoff from the area above the fill shall be diverted away from the fill and into stabilized diversion channels designed to pass safely the runoff from a 100-year, 6-hour precipitation event or larger event specified by the division. Runoff from the fill surface shall be diverted to stabilized channels which will safely pass the runoff from a 100-year, 6-hour precipitation event. Diversion design shall comply with the requirements of 4VAC25-130-817.43. Temporary diversions may be approved by the division for use during fill construction, provided that erosion is minimized and no threat to the public or the environment results.

(h) The top surface of the fill and any terrace constructed shall be graded such that the final slope after settlement shall be toward properly designed drainage channels. The maximum slope of the top of the fill shall be 20h:1v (5.0%). The vertical distance between terraces shall not exceed 50 feet.

(i) Drainage shall not be directed over the outslope of the fill unless it is in a channel properly designed to minimize infiltration into the fill and to safely pass the runoff from a 100-year, 6-

hour precipitation event or larger event specified by the division.

(j) The outslope of the completed fill shall not exceed an overall slope of 1v:2h. The division may require a flatter slope.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.75, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-817.76. Disposal of excess spoil; incidental reclamation.

(a) The division, where environmental benefits will occur, may approve placement of spoil not needed to restore the approximate original contour of the land and reclaim land within the permit area in a manner consistent with the Act and this chapter on:

- (1) Another area under a permit issued pursuant to the Act, or
- (2) On abandoned mine lands under a contract for reclamation according to the AML Guidelines and approved by the Division of Mined Land Reclamation.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.76, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-817.81. Coal mine waste; general requirements.

(a) General. All coal mine waste disposed of in an area other than the mine workings or excavations shall be placed in new or existing disposal areas within a permit area, which are approved by the division for this purpose. Coal mine waste shall be hauled or conveyed and placed for final placement in a controlled manner to—

- (1) Minimize adverse effects of leachate and surface-water runoff on surface and ground water quality and quantity;
- (2) Ensure mass stability and prevent mass movement during and after construction;
- (3) Ensure that the final disposal facility is suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use;
- (4) Not create a public hazard; and
- (5) Prevent combustion.

(b) Waste from other areas. Coal mine waste materials from activities located outside a permit area may be disposed of in the permit area only if approved by the division. Approval shall be based upon a showing that such disposal will be in accordance with the standards of this section.

(c) Design certification.

(1) The disposal facility shall be designed using current, prudent engineering practices and any criteria established by the division as necessary to achieve the standards of this Part. A qualified registered professional engineer, experienced in the design of similar earth and waste structures, shall certify the design of the disposal facility.

(2) The disposal facility shall be designed to attain a minimum long-term static safety factor of 1.5. The foundation and abutments must be stable under all conditions of construction.

(d) Foundation. Sufficient foundation investigations, as well as any necessary laboratory testing of foundation material, shall be performed in order to determine the design requirements for foundation stability. The analyses of the foundation conditions shall take into consideration the effect of underground mine workings, if any, upon the stability of the disposal facility.

(e) Emergency procedures. If any examination or inspection discloses that a potential hazard exists, the division shall be informed promptly of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the division shall be notified immediately. Notification shall be by the fastest available means and followed in writing. The division shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

(f) Underground disposal. Coal mine waste may be disposed of in underground mine workings, but only in accordance with a plan approved by the division and MSHA under 4VAC25-130-784.25.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.81, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 15, Issue 6, eff. January 6, 1999.

4VAC25-130-817.83. Coal mine waste; refuse piles.

Refuse piles shall meet the requirements of 4VAC25-130-817.81, the additional requirements of this section, and the requirements of 30 CFR 77.214 and 77.215.

(a) Drainage control.

(1) If the disposal area contains springs, natural or manmade water courses, or wet weather seeps, the design shall include diversions and underdrains as necessary to control erosion, prevent water infiltration into the disposal facility and ensure stability.

(2) Uncontrolled surface drainage may not be diverted over the outslope of the refuse pile. Runoff from areas above the refuse pile and runoff from the surface of the refuse pile shall be diverted into stabilized diversion channels designed to meet the requirements of 4VAC25-130-817.43 to safely pass the runoff from a 100-year, 6-hour precipitation event. Runoff diverted from undisturbed areas need not be commingled with runoff from the surface of the refuse pile. The appropriate surface drainage system shall be installed prior to placement of coal mine waste in the disposal area.

(3) Underdrains shall comply with the requirements of 4VAC25-130-817.71(f)(3).

(b) Surface area stabilization. Slope protection shall be provided to minimize surface erosion at the site. All disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.

(c) Placement.

(1) All vegetative and organic materials shall be removed from the disposal area prior to placement of coal mine waste. Topsoil shall be removed, segregated and stored or redistributed in accordance with 4VAC25-130-817.22. If approved by the division, organic material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation or increase the moisture retention of the soil.

(2) The final configuration of the refuse pile shall be suitable for the approved postmining land use. Terraces may be constructed on the outslope of the refuse pile if required for stability, control of erosion, conservation of soil moisture, or facilitation of the approved postmining land use. The grade of the outslope between terrace benches shall not be steeper than 2h:1v (50 percent). Terraces, if constructed, shall be no less than 20 feet in width and the vertical distance between terraces shall not exceed 50 feet. Terraces on the fill shall be graded with a minimum 3.0% grade toward the fill and a minimum 1.0% slope toward the drainage control system.

(3) No permanent impoundments shall be allowed on the completed refuse pile. Small depressions may be allowed by the division if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation, and if they are not incompatible with stability of the refuse pile.

(4) Following final grading of the refuse pile, the coal mine waste shall be covered with a minimum of four feet of the best available, nontoxic and noncombustible material, in a manner that does not impede drainage from the underdrains. The division may allow less than four feet of cover material based on physical and chemical analyses which show that the requirements of 4VAC25-130-817.111 through 4VAC25-130-817.116 will be met.

(d) Inspections. A qualified registered professional engineer, or other qualified professional specialist under the direction of the professional engineer, shall inspect the refuse pile during construction. The professional engineer and specialist shall be experienced in the construction of similar earth and waste structures.

(1) Such inspections shall be made at least quarterly throughout construction and during

critical construction periods. Critical construction periods shall include at a minimum: (i) Foundation preparation including the removal of all organic material and topsoil; (ii) placement of underdrains and protective filter systems; (iii) installation of final surface drainage systems; and (iv) the final graded and revegetated facility. Regular inspections by the engineer or specialist shall also be conducted during placement and compaction of coal mine waste materials. More frequent inspections shall be conducted if a danger of harm exists to the public health and safety or the environment. Inspections shall continue until the refuse pile has been finally graded and revegetated or until a later time as required by the division.

(2) The qualified registered professional engineer shall provide a certified report to the division within two weeks after each inspection that the refuse pile has been constructed and maintained as designed and in accordance with the approved plan and this chapter. The report shall include appearances of instability, structural weakness, and other hazardous conditions.

(3) The certified report on the drainage system and protective filters shall include color photographs taken during and after construction, but before underdrains are covered with coal mine waste. If the underdrain system is constructed in phases, each phase shall be certified separately. The photographs accompanying each certified report shall be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site.

(4) A copy of each inspection report shall be retained at or near the minesite.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.83, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-817.84. Coal mine waste; impounding structures.

New and existing impounding structures constructed of coal mine waste or intended to impound coal mine waste shall meet the requirements of 4VAC25-130-817.81 and the additional requirements of this section.

(a) Coal mine waste shall not be used for construction of impounding structures unless it has been demonstrated to the division that the stability of such a structure conforms to the requirements of this Part and the use of coal mine waste will not have a detrimental effect on downstream water quality or the environment due to acid seepage through the impounding structure. The stability of the structure and the potential impact of acid mine seepage through the impounding structure shall be discussed in detail in the design plan submitted to the division in accordance with 4VAC25-130-784.16.

(b)(1) Each impounding structure constructed of coal mine waste or intended to impound coal

mine waste shall be designed, constructed and maintained in accordance with 4VAC25-130-817.49(a) and (c). Such structures may not be retained permanently as part of the approved postmining land use.

(2) Each impounding structure constructed of coal mine waste or intended to impound coal mine waste that meets the criteria of 30 CFR 77.216(a) shall have sufficient spillway capacity to safely pass, adequate storage capacity to safely contain or a combination of storage capacity and spillway capacity to safely control, the probable maximum precipitation of a 6-hour precipitation event, or greater event as specified by the division.

(c) Spillways and outlet works shall be designed to provide adequate protection against erosion and corrosion. Inlets shall be protected against blockage.

(d) Drainage control. Runoff from areas above the disposal facility or runoff from the surface of the facility that may cause instability or erosion of the impounding structure shall be diverted into stabilized diversion channels designed to meet the requirements of 4VAC25-130-817.43 and designed to safely pass the runoff from a 100-year, 6-hour design precipitation event.

(e) Impounding structures constructed of or impounding coal mine waste shall be designed so that at least 90 percent of the water stored during the design precipitation event can be removed within a 10-day period.

(f) For an impounding structure constructed of or impounding coal mine waste, at least 90 percent of the water stored during the design precipitation event shall be removed within the 10-day period following the design precipitation event.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.84, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-817.87. Coal mine waste; burning and burned waste utilization.

(a) Coal mine waste fires shall be extinguished by the person who conducts the surface mining activities, in accordance with a plan approved by the division and the Mine Safety and Health Administration. The plan shall contain, at a minimum, provisions to ensure that only those persons authorized by the permittee, and who have an understanding of the procedures to be used, shall be involved in the extinguishing operations.

(b) No burning or unburned coal mine waste shall be removed from a permitted disposal area without a removal plan approved by the division. Consideration shall be given to potential hazards to persons working or living in the vicinity of the structure.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.87, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-817.89. Disposal of noncoal mine wastes.

(a) Noncoal mine wastes including, but not limited to grease, lubricants, paints, flammable liquids, garbage, abandoned mining machinery, lumber and other combustible materials generated during mining activities shall be placed and stored in a controlled manner in a designated portion of the permit area. Placement and storage shall ensure that leachate and surface runoff do not degrade surface or ground water, that fires are prevented, and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings.

(b) Final disposal of noncoal mine wastes shall be in a designated disposal site in the permit area or a state-approved solid waste disposal area. Disposal sites in the permit area shall be designed and constructed to ensure that leachate and drainage from the noncoal mine waste area does not degrade surface or underground water. Wastes shall be routinely compacted and covered to prevent combustion and wind-borne waste. When the disposal is completed, a minimum of two feet of soil cover shall be placed over the site, slopes stabilized, and revegetation accomplished in accordance with 4VAC25-130-817.111 through 4VAC25-130-817.116. Operation of the disposal site shall be conducted in accordance with all local, state, and federal requirements.

(c) At no time shall any noncoal mine waste be deposited in a refuse pile or impounding structure, nor shall a noncoal mine waste disposal site be located within 8 feet of any coal outcrop or coal storage area.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.89, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 15, Issue 6, eff. January 6, 1999.

4VAC25-130-817.95. Stabilization of surface areas.

(a) All exposed surface areas shall be protected and stabilized to effectively control erosion and air pollution attendant to erosion.

(b) Rills and gullies which form in areas that have been regraded and topsoiled and which either (1) disrupt the approved postmining land use or the reestablishment of the vegetative cover, or (2) cause or contribute to a violation of water quality standards for receiving streams shall be filled, regraded, or otherwise stabilized; topsoil shall be replaced; and the areas shall be reseeded or replanted.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.95, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-817.97. Protection of fish, wildlife, and related environmental values.

- (a) The permittee shall, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts on fish, wildlife, and related environmental values and shall achieve enhancement of such resources where practicable.
- (b) Endangered and threatened species. No underground mining activity shall be conducted which is likely to jeopardize the continued existence of endangered or threatened species listed by the United States Secretary of the Interior or which is likely to result in the destruction or adverse modification of designated critical habitats of such species in violation of the Endangered Species Act of 1973, as amended (16 USC § 1531 et seq.). The operator shall promptly report to the division any State or Federally listed endangered or threatened species within the permit area of which the operator becomes aware. Upon notification, the division shall consult with appropriate State and Federal fish and wildlife agencies and, after consultation, shall identify whether, and under what conditions, the operator may proceed.
- (c) Bald and golden eagles. No underground mining activity shall be conducted in a manner which would result in the unlawful taking of a bald or golden eagle, its nest, or any of its eggs. The permittee shall promptly report to the division any golden or bald eagle nest within the permit area of which the permittee becomes aware. Upon notification, the division shall consult with the U.S. Fish and Wildlife Service and also, where appropriate, the State fish and wildlife agency and, after consultation, shall identify whether, and under what conditions, the permittee may proceed.
- (d) Nothing in this chapter shall authorize the taking of an endangered or threatened species or a bald or golden eagle, its nest, or any of its eggs in violation of the Endangered Species Act of 1973, as amended, 16 USC § 1531 et seq., or the Bald Eagle Protection Act, as amended, 16 USC § 668 et seq.
- (e) Each permittee shall, to the extent possible using the best technology currently available--
- (1) Ensure that electric powerlines and other transmission facilities used for, or incidental to, underground mining activities on the permit area are designed and constructed to minimize electrocution hazards to raptors, except where the division determines that such requirements are unnecessary;
 - (2) Locate and operate haul and access roads so as to avoid or minimize impacts on important fish and wildlife species or other species protected by State or Federal law;

(3) Design fences, overland conveyors, and other potential barriers to permit passage for large mammals, except where the division determines that such requirements are unnecessary; and

(4) Fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials.

(f) Wetlands and habitats of unusually high value for fish and wildlife. The permittee shall avoid disturbances to, enhance where practicable, restore, or replace, wetlands, and riparian vegetation along rivers and streams and bordering ponds and lakes. Underground mining activities shall avoid disturbances to, enhance where practicable, or restore, habitats of unusually high value for fish and wildlife.

(g) Where fish and wildlife habitat is to be a postmining land use, the plant species to be used on reclaimed areas shall be selected on the basis of the following criteria:

(1) Their proven nutritional value for fish or wildlife.

(2) Their use as cover for fish or wildlife.

(3) Their ability to support and enhance fish or wildlife habitat after the release of performance bonds. The selected plants shall be grouped and distributed in a manner which optimizes edge effect, cover, and other benefits to fish and wildlife.

(h) Where cropland is to be the postmining land use, and where appropriate for wildlife- and crop-management practices, the permittee shall intersperse the fields with trees, hedges, or fence rows throughout the harvested area to break up large blocks of monoculture and to diversify habitat types for birds and other animals.

(i) Where residential, public service, or industrial uses are to be the postmining land use, and where consistent with the approved postmining land use, the permittee shall intersperse reclaimed lands with greenbelts utilizing species of grass, shrubs, and trees useful as food and cover for wildlife.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.97, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-817.99. Slides and other damage.

At any time a slide occurs which may have a potential adverse effect on public property, health, safety, or the environment, the person who conducts the underground mining activities shall notify the division by the fastest available means and comply with any remedial measures required by the division.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.99, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-817.100. Contemporaneous reclamation.

(a) General. Reclamation efforts, including but not limited to backfilling, grading, topsoil replacement, and revegetation, on all areas affected by surface impacts incident to an underground coal mine shall occur as contemporaneously as practicable with mining operations, except when such mining operations are conducted in accordance with a variance for concurrent surface and underground mining activities issued under 4VAC25-130-785.18.

(b) Timing of backfilling and grading.

(1) Contour mining. Rough backfilling and grading shall follow coal removal by not more than 60 days or 1,500 linear feet. The division may grant additional time for rough backfilling and grading if the permittee can demonstrate, through a detailed written analysis under 4VAC25-130-784.13(b)(3), that additional time is necessary.

(2) Open pit mining with thin overburden. Rough backfilling and grading shall occur in accordance with the time schedule approved by the division, on the basis of the materials submitted under 4VAC25-130-784.13(b)(3), which shall specifically establish in stated increments the period between removal of coal and completion of backfilling and grading.

(3) Area strip mining. Rough backfilling and grading shall be completed within 180 days following coal removal and shall not be more than four spoil ridges behind the pit being worked, the spoil from the active pit being considered the first ridge. The division may grant additional time for rough backfilling and grading if the permittee can demonstrate, through a detailed written analysis under 4VAC25-130-784.13(b)(3), that additional time is necessary.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.100, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-817.102. Backfilling and grading; general requirements.

(a) Disturbed areas shall be backfilled and graded to:

(1) Achieve the approximate original contour, except as provided in subsection (k) of this section;

- (2) Eliminate all highwalls, spoil piles, and depressions, except as provided in subsection (h) (small depressions) and in subdivision (k)(2) (previously mined highwalls) of this section;
- (3) Achieve a postmining slope that does not exceed either the angle of repose or such lesser slope as is necessary to achieve a minimum long-term static safety factor of 1.3 and to prevent slides;
- (4) Minimize erosion and water pollution both on and off the site; and
- (5) Support the approved postmining land use.

(b) Spoil, except as provided in subsection (l) of this section, and except excess spoil disposed of in accordance with 4VAC25-130-817.71 through 4VAC25-130-817.75, shall be returned to the mined-out surface area.

(c) Spoil and waste materials shall be compacted where advisable to ensure stability or to prevent leaching of toxic materials.

(d) Spoil may be placed on the area outside the mined-out surface area in nonsteep slope areas to restore the approximate original contour by blending the spoil into the surrounding terrain if the following requirements are met:

- (1) All vegetative and organic material shall be removed from the area.
- (2) The topsoil on the area shall be removed, segregated, stored, and redistributed in accordance with 4VAC25-130-817.22.
- (3) The spoil shall be backfilled and graded on the area in accordance with the requirements of this section.

(e) Disposal of coal processing waste and underground development waste in the mined-out surface area shall be in accordance with 4VAC25-130-817.81 and 4VAC25-130-817.83 as provided in subdivisions (1) and (2) of this subsection, except that a long-term static safety factor of 1.3 shall be achieved.

(1) Disposal of coal processing waste and underground development waste in the mined-out area to backfill disturbed areas shall be in accordance with 4VAC25-130-817.81.

(2) Disposal of coal processing waste and underground development waste in the mined-out area as a refuse pile and not to backfill disturbed areas shall be in accordance with 4VAC25-130-817.81 and 4VAC25-130-817.83. The division may approve a variance to 4VAC25-130-817.83 (a) (2) if the applicant demonstrates that the area above the refuse pile is small and that appropriate measures will be taken to direct or convey runoff across the surface area of the pile in a controlled manner.

(f) Exposed coal seams, acid- and toxic-forming materials, and combustible materials exposed, used, or produced during mining shall be covered with a minimum of four feet of nontoxic and noncombustible materials, or treated, to control the impact on surface and ground water in accordance with 4VAC25-130-817.41, to prevent sustained combustion, and to minimize adverse effects on plant growth and the approved postmining land use. Acid- and toxic-forming materials shall not be buried or stored in proximity to any drainage course.

(g) Cut-and-fill terraces may be allowed by the division where:

- (1) Needed to conserve soil moisture, ensure stability, and control erosion on final-graded slopes, if the terraces are compatible with the approved postmining land use; or
- (2) Specialized grading, foundation conditions, or roads are required for the approved postmining land use, in which case the final grading may include a terrace of adequate width to ensure the safety, stability, and erosion control necessary to implement the postmining land-use plan.

(h) Small depressions may be constructed if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation.

(i) Permanent impoundments may be approved if they meet the requirements of 4VAC25-130-817.49 and 4VAC25-130-817.56 and if they are suitable for the approved postmining land use.

(j) Preparation of final-graded surfaces shall be conducted in a manner that minimizes erosion and provides a surface for replacement of topsoil that will minimize slippage.

(k) The postmining slope may vary from the approximate original contour when approval is obtained from the division for:

- (1) A variance from approximate original contour requirements in accordance with 4VAC25-130-785.16; or
- (2) Incomplete elimination of highwalls in previously mined areas in accordance with 4VAC25-130-817.106.

(l) Regrading of settled and revegetated fills to achieve approximate original contour at the conclusion of underground mining activities shall not be required if the conditions of subdivision (l)(1) or (l)(2) of this section are met.

- (1) (i) Settled and revegetated fills shall be composed of spoil or non-acid- or non-toxic-forming underground development waste.
 - (ii) The spoil or underground development waste shall not be located so as to be detrimental to the environment, to the health and safety of the public, or to the approved postmining land use.
 - (iii) Stability of the spoil or underground development waste shall be demonstrated through standard geotechnical analysis to be consistent with backfilling and grading requirements for material on the solid bench (1.3 static safety factor) or excess spoil requirements for material not placed on a solid bench (1.5 static safety factor).
 - (iv) The surface of the spoil or underground development waste shall be vegetated according to 4VAC25-130-817.116, and surface runoff shall be controlled in accordance with 4VAC25-130-817.43.

(2) If it is determined by the division that disturbance of the existing spoil or underground development waste would increase environmental harm or adversely affect the health and safety of the public, the division may allow the existing spoil or underground development

waste pile to remain in place. The division may require stabilization of such spoil or underground development waste in accordance with the requirements of subdivisions (l)(1)(i)-(l)(1)(iv) of this section.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.102, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 11, Issue 26, eff. October 18, 1995.

4VAC25-130-817.106. Backfilling and grading; previously mined areas.

(a) Remining operations on previously mined areas that contain a preexisting highwall shall comply with the requirements of 4VAC25-130-817.102 through 4VAC25-130-817.107, except as provided in this section.

(b) The requirements of 4VAC25-130-817.102(a)(1) and (a)(2) requiring the elimination of highwalls shall not apply to remining operations where the volume of all reasonably available spoil is demonstrated in writing to the division to be insufficient to completely backfill the reaffected or enlarged highwall. The highwall shall be eliminated to the maximum extent technically practical in accordance with the following criteria:

- (1) All spoil generated by the remining operation and any other reasonably available spoil shall be used to backfill the area. Reasonably available spoil in the immediate vicinity of the remining operation shall be included within the permit area.
- (2) The backfill shall be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability.
- (3) Any highwall remnant shall be stable and not pose a hazard to the public health and safety or to the environment. The permittee shall demonstrate, to the satisfaction of the division, that the highwall remnant is stable.
- (4) Spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbances will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.
- (5) Access roads shall be provided from the bench to the top of the highwall approximately every 2,500 feet. Access roads shall be constructed to allow access by 4-wheel drive vehicles.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.106, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982;

December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-817.107. Backfilling and grading; steep slopes.

- (a) Underground mining activities on steep slopes shall be conducted so as to meet the requirements of 4VAC25-130-817.102 through 4VAC25-130-817.106 and the requirements of this section.
- (b) The following materials shall not be placed or allowed to remain on the downslope:
- (1) Spoil.
 - (2) Waste materials of any type.
 - (3) Debris, including that from clearing and grubbing.
 - (4) Abandoned or disabled equipment.
- (c) Land above the highwall shall not be disturbed unless the division finds that this disturbance will facilitate compliance with the environmental protection standards of this Subchapter and the disturbance is limited to that necessary to facilitate compliance.
- (d) Woody materials shall not be buried in the backfilled area unless the division determines that the proposed method for placing woody material within the backfill will not deteriorate the stable condition of the backfilled area.
- (e) The permittee must demonstrate to the division, using standard geotechnical analysis, that the minimum static factor of safety for the stability of all portions of the reclaimed land is at least 1.3. A lower or higher factor of safety may be specified by the division upon a finding that the backfilled area will not present any actual or probable hazard to public property, health, safety, and the environment. The factor of safety specified shall be based on accepted geotechnical engineering analyses. A lower factor of safety shall be approved only upon a demonstration that:
- (i) The degree of uncertainty in the calculation has been reduced through the use of thorough geotechnical testing and analyses. Sufficient investigation and laboratory testing shall be conducted to determine the design requirements for stability of the backfilled area. The testing and analyses shall include at a minimum consideration of the properties of the spoil to be backfilled, foundation conditions, and surface and groundwater flows.
 - (ii) The backfilled area will not present any actual or probable hazard to public health and safety or the environment.
 - (iii) A system of underdrains is utilized to assure that the phreatic surface within the backfilled area is controlled. The underdrains shall be constructed of non-degradable, non-acidic or toxic-forming material such as natural sand and gravel, sandstone, or other durable rock that will not slake in water and which is essentially free of coal, clay, or shale. The internal drainage system must ensure continued free drainage of anticipated seepage from precipitation and from springs or wet weather seeps. The drain size shall be designed to safely

route the anticipated seepage flows over the long term life of the backfilled area.

(iv) The design shall be certified by a qualified registered professional engineer experienced in the construction of earth and rockfill embankments as being in conformance with accepted professional standards.

(v) The backfilled area shall be inspected by a qualified registered professional engineer or other qualified professional specialist experienced in the construction of earth and rock-fill embankments during critical construction periods. The registered engineer shall provide to the division a certified report within two weeks after each inspection that the backfilled area has been constructed as specified in the design approved by the division.

(f) Drainage channels or roads which are approved under 4VAC25-130-817.133 for the postmining land use and which are to be located in the uppermost portion of the backfilled area shall be approved by the division only upon a finding that the highwall shall be completely covered. The division may approve incorporating the drainage channel or road as an integral part of the backfilled area with the requirement to blend or shave the highwall into the natural terrain, if the standards of this section are satisfied.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.107, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-817.111. Revegetation; general requirements.

(a) The permittee shall establish on regraded areas and on all other disturbed areas except water areas and surface areas of roads that are approved as part of the postmining land use, a vegetative cover that is in accordance with the approved permit and reclamation plan and that is-

- (1) Diverse, effective, and permanent;
 - (2) Comprised of species native to the area, or of introduced species where desirable and necessary to achieve the approved postmining land use and approved by the division;
 - (3) At least equal in extent of cover to the natural vegetation of the area; and
 - (4) Capable of stabilizing the soil surface from erosion.
- (b) The reestablished plant species shall--
- (1) Be compatible with the approved postmining land use;
 - (2) Have the same seasonal characteristics of growth as the original vegetation;
 - (3) Be capable of self-regeneration and plant succession;

(4) Be compatible with the plant and animal species of the area; and

(5) Meet the requirements of applicable State and Federal seed, poisonous and noxious plant, and introduced species laws or regulations.

(c) The division may grant exception to the requirements of Paragraphs (b)(2) and (b)(3) of this section when the species are necessary to achieve a quick-growing, temporary, stabilizing cover, and measures to establish permanent vegetation are included in the approved permit and reclamation plan.

(d) When the division approves a cropland postmining land use, the division may grant exceptions to the requirements of Paragraphs (a)(1), (a)(3), (b)(2), and (b)(3) of this section. The requirements of Part 823 apply to areas identified as prime farmland.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.111, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-817.113. Revegetation; timing.

Disturbed areas shall be planted during the first normal period for favorable planting conditions after replacement of the plant-growth medium. The normal period for favorable planting is that planting time generally accepted locally for the type of plant materials selected.

When necessary to effectively control erosion, disturbed areas shall be planted, as contemporaneously as practicable with the completion of backfilling and grading, with a temporary cover of small grains, grasses, or legumes until a permanent cover is established.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.113, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-817.114. Revegetation; mulching and other soil stabilizing practices.

Suitable mulch or other soil stabilizing practices shall be used on all areas that have been regraded and covered by topsoil or topsoil substitutes. The division may waive this requirement if seasonal, soil, or slope factors result in a condition where mulch or other soil stabilizing practices are not necessary to control erosion and to promptly establish an effective vegetative cover.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.114, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-817.116. Revegetation; standards for success.

(a) Success of revegetation shall be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in natural vegetation of the area, and the general requirements of 4VAC25-130-817.111.

(1) Statistically valid sampling techniques shall be used for measuring success.

(2) Ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90% of the success standard. The sampling techniques for measuring success shall use a 90% statistical confidence interval (i.e., a one-sided test with a 0.10 alpha error). Sampling techniques for measuring woody plant stocking, ground cover, and production shall be in accordance with techniques approved by the division.

(b) Standards for success shall be applied in accordance with the approved postmining land use and, at a minimum, the following conditions:

(1) For areas developed for use as grazing land or pasture land, the ground cover and production of living plants on the revegetated area shall be at least equal to that of a reference area or if approved by the division, a vegetative ground cover of 90% for areas planted only in herbaceous species and productivity at least equal to the productivity of the premining soils may be achieved. Premining productivity shall be based upon data of the U.S. Natural Resources Conservation Service and measured in such units as weight of material produced per acre or animal units supported.

(2) For areas developed for use as cropland, crop production on the revegetated area shall be at least equal to that of a reference area or if approved by the division, crop yields shall be at least equal to the yields for reference crops from unmined lands. Reference crop yields shall be determined from the current yield records of representative local farms in the surrounding area or from the average county yields recognized by the U.S. Department of Agriculture.

(3) For areas to be developed for fish and wildlife habitat, undeveloped land, recreation, shelter belts, or forestry, the stocking of woody plants must be at least equal to the rates specified in the approved reclamation plan. To minimize competition with woody plants, herbaceous ground cover should be limited to that necessary to control erosion and support the postmining land use. Seed mixtures and seeding rates will be specified in the approved

reclamation plan. Such parameters are described as follows:

(i) Minimum stocking and planting arrangements shall be specified by the division on the basis of local and regional conditions and after consultation with and approval by the state agencies responsible for the administration of forestry and wildlife programs.

Consultation and approval may occur on either a program wide or a permit specific basis.

(ii) Trees and shrubs that will be used in determining the success of stocking and the adequacy of the plant arrangement shall have utility for the approved postmining land use. Trees and shrubs counted in determining such success shall be healthy and have been in place for not less than two growing seasons. At the time of bond release, at least 80% of the trees and shrubs used to determine such success shall have been in place for at least three years. Root crown or root sprouts over one foot in height shall count as one toward meeting the stocking requirements. Where multiple stems occur, only the tallest stem will be counted.

(iii) Vegetative ground cover shall not be less than that required to control erosion and achieve the approved postmining land use.

(iv) Where commercial forest land is the approved postmining land use:

(A) The area shall have a minimum stocking of 400 trees per acre.

(B) All countable trees shall be commercial species and shall be well distributed over each acre stocked.

(C) Additionally, the area shall have an average of at least 40 wildlife food-producing shrubs per acre. The shrubs shall be suitably located for wildlife enhancement, and may be distributed or clustered.

(v) Where woody plants are used for wildlife management, recreation, shelter belts, or forest uses other than commercial forest land:

(A) The stocking of trees, shrubs, half-shrubs and the ground cover established on the revegetated area shall utilize local and regional recommendations regarding species composition, spacing and planting arrangement;

(B) Areas planted only in herbaceous species shall sustain a vegetative ground cover of 90%;

(C) Areas planted with a mixture of herbaceous and woody species shall sustain a herbaceous vegetative ground cover in accordance with guidance provided by the division and the approved forestry reclamation plan and establish an average of 400 woody plants per acre. At least 40 of the woody plants for each acre shall be wildlife food-producing shrubs located suitably for wildlife enhancement, which may be distributed or clustered on the area.

(4) For areas to be developed for industrial, commercial, or residential use less than two years

after regrading is completed, the vegetative ground cover shall not be less than that required to control erosion.

(5) For areas previously disturbed by mining that were not reclaimed to the requirements of this subchapter and that are remined or otherwise redisturbed by surface coal mining operations, as a minimum, the vegetative ground cover shall be not less than the ground cover existing before redisturbance and shall be adequate to control erosion.

(c) (1) The period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the division in accordance with subdivision (c)(3) of this section.

(2) The period of responsibility shall continue for a period of not less than

(i) Five full years except as provided in subdivision (c)(2)(ii) of this section. The vegetation parameters identified in subsection (b) of this section for grazing land or pastureland and cropland shall equal or exceed the approved success standard during the growing seasons of any two years of the responsibility period, except the first year. Areas approved for the other uses identified in subsection (b) of this section shall equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.

(ii) Two full years for lands eligible for remining. To the extent that the success standards are established by subdivision (b)(5) of this section, the lands shall equal or exceed the standards during the growing season of the last year of the responsibility period.

(3) The division may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, without extending the period of responsibility for revegetation success and bond liability, if such practices can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices shall be normal husbandry practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control; and any pruning, reseeding and/or transplanting specifically necessitated by such actions.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.116, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 12, Issue 2, eff. November 15, 1995; Volume 14, Issue 5, eff. December 24, 1997; Volume 23, Issue 16, eff. May 16, 2007; Volume 25, Issue 12, eff. March 18, 2009.

4VAC25-130-817.121. Subsidence control.

(a) Measures to prevent or minimize damage.

(1) The permittee shall either adopt measures consistent with known technology which prevent subsidence from causing material damage to the extent technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of surface lands; or adopt mining technology which provides for planned subsidence in a predictable and controlled manner. Nothing in this part shall be construed to prohibit the standard method of room-and-pillar mining.

(2) If a permittee employs mining technology that provides for planned subsidence in a predictable and controlled manner, the permittee must take necessary and prudent measures, consistent with the mining method employed, to minimize material damage to the extent technologically and economically feasible to noncommercial buildings and occupied residential dwellings and structures related thereto except that measures required to minimize material damage to such structures are not required if:

(i) The permittee has the written consent of the structure owners;

(ii) Unless the anticipated damage would constitute a threat to health or safety, the costs of such measures exceed the anticipated costs of repair; or

(iii) The structure owners have denied the permittee access to implement the measures specified in subdivision (a) (2) of this section and the permittee has provided written evidence of his good faith efforts to obtain access. The good faith effort shall include documentation apprising the structure owners that such measures are intended to lessen the potential for property damages or personal injury and that denial of access will not prevent mining.

(b) The permittee shall comply with all provisions of the approved subsidence control plan prepared pursuant to 4VAC25-130-784.20.

(c) Repair of damage.

(1) Repair of damage to surface lands. The permittee must correct any material damage resulting from subsidence caused to surface lands, to the extent technologically and economically feasible, by restoring the land to a condition capable of maintaining the value and reasonably foreseeable uses that it was capable of supporting before subsidence damage.

(2) Repair or compensation for damage to noncommercial buildings and dwellings and related structures. The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any noncommercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. If repair option is selected, the permittee must fully rehabilitate, restore, or replace the damaged structure. If compensation is selected, the permittee must compensate the owner of the damaged structure for the full amount of the decrease in value resulting from the subsidence related damage. The permittee may provide compensation by the purchase, before mining, of a noncancelable premium-prepaid insurance policy. The requirements of this subdivision

apply only to subsidence related damage caused by underground mining activities conducted after October 24, 1992.

(3) Repair or compensation for damage to other structures. The permittee must, to the extent required under applicable provisions of state law, either correct material damage resulting from subsidence caused to any structures or facilities not protected by subdivision (c) (2) of this section by repairing the damage or compensate the owner of the structures or facilities for the full amount of the decrease in value resulting from the subsidence. Repair of damage includes rehabilitation, restoration, or replacement of damaged structures or facilities. Compensation may be accomplished by the purchase before mining of a noncancelable premium-prepaid insurance policy.

(4) Information to be considered in determination of causation. In a determination whether damage to protected structures was caused by subsidence from underground mining, all relevant and reasonably available information will be considered by the division.

(5) Adjustment of bond amount for subsidence damage. When subsidence related material damage to land, structures, or facilities protected under subdivisions (c) (1) through (c) (3) of this section occurs, or when contamination, diminution, or interruption to a water supply protected under 4VAC25-130-817.41 (j) occurs, the permittee shall provide additional performance bond in the amount of the estimated cost of the repairs if the permittee will be repairing, or in the amount of the decrease in value if the permittee will be compensating the owner, or in the amount of the estimated cost to replace the protected water supply if the permittee will be replacing the water supply, until the repair, compensation, or replacement is completed. If repair, compensation or replacement is completed within 90 days of the occurrence of damage or if the permittee demonstrates that the liability insurance required under 4VAC25-130-800.60 provides applicable to exceed one year, if the permittee demonstrates and the division finds in writing that subsidence is not complete, that not all probable subsidence related material damage has occurred to lands or protected structures, or that not all reasonably anticipated changes have occurred affecting the protected water supply, and that, therefore, it would be unreasonable to complete within 90 days the repair of the subsidence related material damage to lands or protected structures, or the replacement of protected water supply.

(d) Underground mining activities shall not be conducted beneath or adjacent to:

(1) Public buildings and facilities;

(2) Churches, schools, and hospitals; or

(3) Impoundments with a storage capacity of 20 acre-feet or more or bodies of water with a volume of 20 acre-feet or more, unless the subsidence control plan demonstrates that subsidence will not cause material damage to, or reduce the reasonably foreseeable use of, such features or facilities. If the division determines that it is necessary in order to minimize the potential for material damage to the features or facilities described above or to any aquifer or body of water that serves as a significant water source for any public water supply

system, it may limit the percentage of coal extracted under or adjacent thereto.

(e) If subsidence causes material damage to any of the features or facilities covered by subsection (d) of this section, the division may suspend mining under or adjacent to such features or facilities until the subsidence control plan is modified to ensure prevention of further material damage to such features or facilities.

(f) The division shall suspend underground mining activities under urbanized areas, cities, towns, and communities, and adjacent to industrial or commercial buildings, major impoundments, or perennial streams, if imminent danger is found to inhabitants of the urbanized areas, cities, towns, or communities.

(g) Within a schedule approved by the division, the permittee shall submit a detailed plan of the underground workings. The detailed plan shall include maps and descriptions, as appropriate, of significant features of the underground mine, including the size, configuration, and approximate location of pillars and entries, extraction ratios, measures taken to prevent or minimize subsidence and related damage, areas of full extraction, and other information required by the division. Upon request of the permittee, information submitted with the detailed plan may be held as confidential, in accordance with the requirements of 4VAC25-130-773.13 (d).

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.121, eff. December 15, 1981; amended effective June 28, 1982, October 28, 1982, December 14, 1982, October 11, 1983, December 27, 1983, May 8, 1984, June 22, 1984, August 2, 1984, October 16, 1985, January 7, 1987, July 22, 1987, November 25, 1987, October 12, 1988, December 26, 1990, July 1, 1991, July 17, 1991, November 20, 1991, July 7, 1992, May 5, 1993, October 19, 1994; Virginia Register Volume 14, Issue 5, eff. December 24, 1997; Errata, 14:10 VA.R. 1751 February 2, 1998; amended, Virginia Register Volume 23, Issue 13, eff. April 4, 2007.

4VAC25-130-817.122. Subsidence control; notice.

At least six months prior to mining, or within that period if approved by the division, the permittee shall mail a notification to all owners and occupants of surface property and structures above the underground workings. The notification shall include, at a minimum, identification of specific areas in which mining will take place, dates that specific areas will be undermined, and the location or locations where the permittee's subsidence control plan may be examined.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.122, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-817.131. Cessation of operations; temporary.

(a) The permittee shall effectively support and maintain all surface access openings to underground operations, and secure surface facilities in areas in which there are no current operations, but in which operations are to be resumed under an approved permit. Temporary abandonment shall not relieve a permittee of his obligation to comply with any provisions of the approved permit.

(b) Before temporary cessation of mining and reclamation operations for a period of 30 days or more, or as soon as it is known that a temporary cessation will extend beyond 30 days, the permittee shall submit to the division, a notice of intention to cease or abandon mining and reclamation operations. This notice shall include a statement of the exact number of surface acres and the horizontal and vertical extent of the subsurface strata which have been affected in the permit area prior to abandonment or cessation, the extent and kind of reclamation of those areas which will have been accomplished, identification of the backfilling, regrading, revegetation, environmental monitoring, underground opening closures and water treatment activities that will continue during the temporary cessation, and the anticipated time period for which the temporary cessation of mining and reclamation operations will be in effect.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.131, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-817.132. Cessation of operations; permanent.

(a) Persons who cease underground mining activities permanently shall close or backfill or otherwise permanently reclaim all affected areas, in accordance with this chapter and the permit approved by the division.

(b) All surface equipment, structures or other facilities not required for continued underground mining activities and monitoring, unless approved by the division as suitable for the postmining land use or environmental monitoring, shall be removed and the affected land reclaimed.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.132, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-817.133. Postmining land use.

(a) General. All disturbed areas shall be restored in a timely manner to conditions that are capable of supporting--

- (1) The uses they were capable of supporting before any mining; or
- (2) Higher or better uses.

(b) Determining premining uses of land. The premining uses of land to which the postmining land use is compared shall be those uses which the land previously supported, if the land has not been previously mined and has been properly managed. The postmining land use for land that has been previously mined and not reclaimed shall be judged on the basis of the land use that existed prior to any mining; Provided that, if the land cannot be reclaimed to the land use that existed prior to any mining because of the previously mined condition, the postmining land use shall be judged on the basis of the highest and best use that can be achieved which is compatible with surrounding areas and does not require the disturbance of areas previously unaffected by mining.

(c) Criteria for alternative postmining land uses. Higher or better uses may be approved by the division as alternative postmining land uses after consultation with the landowner or the land management agency having jurisdiction over the lands, if the proposed uses meet the following criteria:

- (1) There is reasonable likelihood for achievement of the use.
- (2) The use does not present any actual or probable hazard to public health and safety, or threat of water diminution or pollution.
- (3) The use will not--
 - (i) Be impractical or unreasonable;
 - (ii) Be inconsistent with applicable land use policies or plans;
 - (iii) Involve unreasonable delay in implementation; or
 - (iv) Cause or contribute to violation of Federal, State, or local law.

(d) Approximate original contour: Criteria for variance. Surface coal mining operations that meet the requirements of this Paragraph may be conducted under a variance from the requirement to restore disturbed areas to their approximate original contour, if the following requirements are satisfied:

- (1) The division grants the variance under a permit issued in accordance with 4VAC25-130-785.16.
- (2) The alternative postmining land use requirements of Paragraph (c) of this section are met.
- (3) All applicable requirements of the Act and this chapter, other than the requirement to restore disturbed areas to their approximate original contour, are met.
- (4) After consultation with the appropriate land use planning agencies, if any, the potential use is shown to constitute an equal or better economic or public use.

- (5) The proposed use is designed and certified by a qualified registered professional engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site.
- (6) After approval, where required, of the appropriate State environmental agencies, the watershed of the permit and adjacent areas is shown to be improved.
- (7) The highwall is completely backfilled with spoil material, in a manner which results in a static factor of safety of at least 1.3, using standard geotechnical analysis.
- (8) Only the amount of spoil as is necessary to achieve the post-mining land use, ensure the stability of spoil retained on the bench, and meet all other requirements of the Act and this chapter is placed off the mine bench. All spoil not retained on the bench shall be placed in accordance with 4VAC25-130-817.71 through 4VAC25-130-817.75.
- (9) The surface landowner of the permit area has knowingly requested, in writing, that a variance be granted, so as to render the land, after reclamation, suitable for an industrial, commercial, residential, or public use (including recreational facilities).
- (10) Federal, State and local government agencies with an interest in the proposed land use have an adequate period in which to review and comment on the proposed use.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.133, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-817.150. Roads; general.

(a) Road classification system.

- (1) Each road, as defined in 4VAC25-130-700.5, shall be classified as either a primary road or an ancillary road.
- (2) A primary road is any road which is--
 - (i) Used for transporting coal or spoil;
 - (ii) Frequently used for access or other purposes for a period in excess of six months; or
 - (iii) To be retained for an approved postmining land use.
- (3) An ancillary road is any road not classified as a primary road.

(b) Performance standards. Each road shall be located, designed, constructed, reconstructed, used, maintained and reclaimed so as to:

- (1) Control or prevent erosion, siltation, and the air pollution attendant to erosion, including

road dust as well as dust occurring on other exposed surfaces, by measures such as vegetating, watering, using chemical or other dust suppressants, or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices;

(2) Control or prevent damage to fish, wildlife or their habitat and related environmental values;

(3) Control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area;

(4) Neither cause nor contribute to, directly or indirectly, the violation of State or Federal water quality standards applicable to receiving waters;

(5) Refrain from significantly altering the normal flow of water in streambeds or drainage channels;

(6) Prevent or control damage to public or private property including the prevention or mitigation of adverse effects on lands within the boundaries of units of The National Park System, The National Wildlife Refuge System, The National System of Trails, The National Wilderness Preservation System, The Wild and Scenic Rivers System, including designated study rivers, and national recreation areas designated by Act of Congress; and

(7) Use non-acid and non-toxic-forming substances in road surfacing.

(c) Design and construction limits and establishment of design criteria. To ensure environmental protection appropriate for their planned duration and use, including consideration of the type and size of equipment use, the design and construction or reconstruction of roads shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement, and culvert size, in accordance with current, prudent engineering practices, and any necessary design criteria established by the division.

(d) Location.

(1) No part of any road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the division in accordance with the applicable portions of 4VAC25-130-817.41 through 4VAC25-130-817.43 and 4VAC25-130-817.57.

(2) Roads shall be located to minimize downstream sedimentation and flooding.

(e) Maintenance.

(1) A road shall be maintained to meet the performance standards of this Part and any additional criteria specified by the division.

(2) A road damaged by a catastrophic event, such as a flood or earthquake, shall be repaired as soon as practical after the damage has occurred.

(f) Reclamation.

(1) A road not to be retained under an approved post-mining land use shall be reclaimed in accordance with the approved reclamation plan as soon as practicable after it is no longer

needed for mining and reclamation operations. This reclamation shall include:

- (i) Closing the road to traffic;
- (ii) Removing all bridges and culverts unless approved as part of the postmining land use;
- (iii) Removing or otherwise disposing of road-surfacing materials that are incompatible with the postmining land use and revegetation requirements;
- (iv) Reshaping cut and fill slopes as necessary to be compatible with the post-mining land use and to complement the drainage pattern of the surrounding terrain;
- (v) Protecting the natural drainage patterns by installing dikes or cross drains as necessary to control surface runoff and erosion. A water bar shall be placed at the head of all pitched grades regardless of other spacing. Water bars shall cross the road at approximately a 30 degree angle. Water bars of the ditch and earth berm type shall be installed according to the following provisions:

Percent of Road Grade	Spacing of Water Bars in Feet
0 - 2	250
3 - 5	135
6 - 10	80
11 - 15	60
15+	40

(vi) Scarifying or ripping the roadbed; replacing topsoil or substitute material, and revegetating disturbed surfaces in accordance with 4VAC25-130-817.22 and 4VAC25-130-817.111 through 4VAC25-130-817.116.

(2) Roads which are to be retained as part of an approved post-mining land use shall be constructed or reconstructed to be compatible with that use. Construction or reconstruction shall include:

- (i) Restoring an existing road to a condition equal to or better than its pre-mining condition; and
- (ii) Meeting the requirements of 4VAC25-130-817.151 as appropriate.

(g) The division may approve alternative specifications if they are demonstrated to result in performance equal to or better than that resulting from roads complying with 4VAC25-130-817.150 and 4VAC25-130-817.151.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.150, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-817.151. Primary roads.

Primary roads shall meet the requirements of 4VAC25-130-817.150 and the additional requirements of this section.

(a) Certification and construction.

- (1) The construction or reconstruction of primary roads shall be certified in a report to the division by a qualified registered professional engineer. The report shall indicate that the primary road has been constructed or reconstructed as designed and in accordance with the approved plan.
- (2) The centerline of a proposed road shall be flagged prior to field inspection.
- (3) All roads shall be subject to a tolerance of plus or minus 2.0% grade.
- (4) Grading. The grade of a road shall not exceed 10% unless a steeper grade is justified by site conditions and topography.
 - (i) The grade shall be controlled to minimize erosion and sedimentation.
 - (ii) The road surface shall be sloped toward the ditch line at the minimum rate of ½ inch per foot of width or crowned at the minimum rate of ½ inch per foot of width as measured from the centerline of the road.
- (5) Cuts. Cut slopes shall not be steeper than 1v:1.5h in unconsolidated materials, 1v:1h in shale, or 1v:0.25h in sandstone. Steeper slopes may be specifically authorized by the division based on the geotechnical analysis.
- (6) Revegetation. All disturbed areas shall be seeded and mulched immediately after construction. If construction occurs during the non-seeding period of November 1-February 15, the permittee may use alternate methods upon approval by the division for control of erosion. Adequate vegetation to control erosion shall be maintained.
- (7) Excess or unsuitable material from excavations shall be disposed of in accordance with 4VAC25-130-817.71. Acid- and toxic-forming material shall be disposed of in accordance with 4VAC25-130-817.41, 4VAC25-130-817.81, and 4VAC25-130-817.102.
- (8) Temporary erosion-control measures shall be implemented during construction to minimize sedimentation and erosion until permanent control measures can be established.

(b) Safety factor. The following specifications shall be utilized for embankment construction. The division may specifically authorize alternate specifications if the geotechnical analysis demonstrates that a minimum safety factor of 1.3 can be maintained.

- (1) All organic material and topsoil shall be removed from the embankment foundation and

no organic material, topsoil, or other unsuitable material shall be placed beneath or in any embankment.

(2) Where an embankment is to be placed on side slopes less than 36%, the following conditions shall be required:

(i) The embankment shall be constructed in uniform, compacted layers not exceeding four feet in thickness.

(ii) The embankment slopes shall not be steeper than 1v:1.5h.

(3) Where an embankment is to be placed on side slopes exceeding 36% the following additional conditions shall be required:

(i) A keyway cut shall be constructed at the toe of the fill to ensure stability; the keyway cut shall be at least 10 feet in width and shall be sloped inward.

(ii) The embankment shall be constructed in uniform compacted layers not exceeding two feet in thickness.

(4) Acid-producing materials may be used in the embankments of only those roads constructed or reconstructed on coal mine waste disposal facilities, if it is demonstrated that no additional acid will leave the confines of the facility. In no case shall acid-producing refuse material be used outside the confines of the coal mine waste disposal facility. Restoration of the road shall be in accordance with the requirements of 4VAC25-130-817.102 through 4VAC25-130-817.116.

(c) Location.

(1) To minimize erosion, a primary road shall be located, insofar as practical, on the most stable available surface.

(2) Fords of perennial or intermittent streams by primary roads are prohibited unless they are specifically approved by the division as temporary routes during periods of road construction.

(d) Drainage control. In accordance with the approved plan.

(1) Each primary road shall be constructed or reconstructed, and maintained to have adequate drainage control, using structures such as, but not limited to, bridges, ditches, cross drains, and ditch relief drains. The drainage control system shall be designed to safely pass the peak runoff from a 10-year, six-hour precipitation event or greater event as specified by the division.

(2) Drainage pipes and culverts shall be installed as designed and maintained in a free and operating condition and to prevent or control erosion at inlets and outlets.

(i) Sufficient culverts shall be installed to limit erosion in ditchlines. Additional culverts may be required by the division if excessive erosion or sedimentation is anticipated or observed.

(ii) Culverts shall cross the road at not less than a 30° angle downgrade, except if risers are

used. Culverts placed in intermittent or perennial streams shall be straight and coincide with normal flow.

(iii) Culverts shall be placed on a minimum 4.0% grade.

(iv) Culverts shall be at least 12 inches in diameter.

(3) Drainage ditches shall be designed to prevent uncontrolled drainage over the road surface and embankment. Trash racks and debris basins shall be installed in the drainage ditches where debris from the drainage area may impair the functions of the drainage and sediment control structures. A ditch shall be provided on both sides of a through-cut and on the inside shoulder of a cut and fill section. Water shall be intercepted before reaching a switchback or large fill and drained safely away. Water from a fill or switchback shall be released below the fill through conduits or in rip rapped channels and shall not be discharged onto the fill. Ditches shall have a minimum constructed depth of one foot, measured from the lowest point in the road surface adjacent to the ditch.

(4) Culverts shall be installed and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the weight of vehicles using the road.

(5) Natural stream channels shall not be altered or relocated without the prior approval of the division in accordance with the applicable portions of 4VAC25-130-817.41 through 4VAC25-130-817.43 and 4VAC25-130-817.57.

(6) Except as provided in subdivision (c)(2) of this section, structures for perennial or intermittent stream channel crossings shall be made using bridges, culverts, low-water crossings, or other structures designed, constructed, and maintained using current, prudent engineering practice. The drainage structure itself can be at least equal to or greater than the stream channel capacity immediately upstream and downstream of the crossing. Low-water crossings shall be designed, constructed, and maintained to prevent erosion of the structure or streambed and additional contributions of suspended solids to streamflow.

(7) (i) Sediment control shall be provided as part of the road drainage system unless runoff is diverted to other approved drainage/sediment control structures.

(ii) Sediment control structures along a road shall be designed to provide 0.025 acre-feet of sediment storage capacity for each acre of disturbed area draining to the structure if the structure is the final discharge point for effluent from the permit area. Other capacities may be required by the division.

(e) Surfacing. Primary roads shall be surfaced with rock, crushed stone, gravel, asphalt, or other material approved by the division as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road.

(f) Maintenance. Routine maintenance for primary roads shall include repairs to the road surface, blading, filling potholes and adding replacement gravel or asphalt. Sediment control structures shall be cleaned regularly and when sediment accumulation may impair their functioning. Maintenance shall also include revegetation, brush removal, and minor reconstruction of road

segments as necessary.

(g) Coal haulage. Any roads used for transporting coal shall have construction or reconstruction completed prior to the hauling of coal.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.151, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 12, Issue 2, eff. November 15, 1995.

4VAC25-130-817.152. Existing roads.

Where existing roads that are to be used meet the performance standards of 4VAC25-130-817.150 and 4VAC25-130-817.151 or it can be demonstrated that reconstruction to meet the design standards of 4VAC25-130-817.150 and 4VAC25-130-817.151 would result in greater environmental harm, the division may waive the design requirements of those sections; however, such roads are to be constructed and maintained to control or prevent erosion. Review will place emphasis on stabilization and the water control system.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.152, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 12, Issue 2, eff. November 15, 1995.

4VAC25-130-817.180. Utility installations.

All underground mining activities shall be conducted in a manner which minimizes damage, destruction, or disruption of services provided by oil, gas, and water wells; oil, gas, and coal-slurry pipelines; railroads; electric and telephone lines; and water and sewage lines which pass over, under, or through the permit area, unless otherwise approved by the owner of those facilities and the division.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.180, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16,

1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-817.181. Support facilities.

(a) Support facilities shall be operated in accordance with a permit issued for the mine or coal preparation plant to which it is incident or from which its operation results.

(b) In addition to the other provisions of this Part, support facilities shall be located, maintained, and used in a manner that--

(1) Prevents or controls erosion and siltation, water pollution, and damage to public or private property; and

(2) To the extent possible using the best technology currently available--

(i) Minimizes damage to fish, wildlife, and related environmental values; and

(ii) Minimizes additional contributions of suspended solids to stream flow or runoff outside the permit area. Any such contributions shall not be in excess of limitations of State or Federal law.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 817.181, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

Part 819

Special Permanent Program Performance Standards—Auger Mining

4VAC25-130-819.1. Scope.

This Part sets environmental protection performance standards for surface coal mining and reclamation operations involving auger mining.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 819.1, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-819.11. Auger mining; general.

(a) Auger mining operations shall be conducted in accordance with the requirements of Part 816, except as provided in this Part.

(b) The division may prohibit auger mining, if necessary to--

- (1) Maximize the utilization, recoverability, or conservation of the solid-fuel resource, or
- (2) Protect against adverse water-quality impacts.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 819.11, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-819.13. Auger mining; coal recovery.

- (a) Auger mining shall be conducted so as to maximize the utilization and conservation of the coal in accordance with 4VAC25-130-816.59.
- (b) Auger mining shall be planned and conducted to maximize recoverability of mineral reserves remaining after the operation and reclamation are complete.
- (c) The permittee shall leave areas of undisturbed coal, as approved by the division, to provide access for future underground mining activities to coal reserves remaining after augering is completed, unless it is established that the coal reserves have been depleted or are so limited in thickness or extent that it will not be practicable to recover the remaining coal. This determination shall be made by the division upon presentation of appropriate technical evidence by the permittee.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 819.13, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-819.15. Auger mining; hydrologic balance.

- (a) Auger mining shall be planned and conducted to minimize disturbances of the prevailing hydrologic balance in accordance with the requirements of 4VAC25-130-816.41 and 4VAC25-130-816.42.
- (b) All auger holes, except as provided in Paragraph (c) of this section, shall be--
 - (1) Sealed within 72 hours after completion with an impervious and noncombustible material, if the holes are discharging water containing acid-or toxic-forming material. If sealing is not possible within 72 hours, the discharge shall be treated commencing within 72 hours after

completion to meet applicable effluent limitations and water-quality standards until the holes are sealed; and

(2) Sealed with an impervious noncombustible material, as contemporaneously as practicable with the augering operation, as approved by the division, if the holes are not discharging water containing acid- or toxic-forming material.

(c) Auger holes need not be sealed with an impervious material so as to prevent drainage if the division determines that--

(1) The resulting impoundment of water may create a hazard to the environment or public health or safety, and

(2) The drainage from the auger holes will--

(i) Not pose a threat of pollution to surface water; and

(ii) Comply with the requirements of 4VAC25-130-816.41 and 4VAC25-130-816.42.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 819.15, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-819.17. Auger mining; subsidence protection.

Auger mining shall be conducted in accordance with the requirements of 4VAC25-130-817.121(a) and (c).

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 819.17, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-819.19. Auger mining; backfilling and grading.

(a) General. Auger mining shall be conducted in accordance with the backfilling and grading requirements of 4VAC25-130-816.102 and 4VAC25-130-816.104 through 4VAC25-130-816.107 and the additional requirements of this section.

(b) Remining. Where auger mining operations affect previously mined areas that were not reclaimed to the standards of this chapter and the volume of all reasonably available spoil is

demonstrated in writing to the division to be insufficient to completely backfill the highwall, the highwall shall be eliminated to the maximum extent technically practical in accordance with the following criteria:

- (1) The permittee shall demonstrate to the division that the backfill, designed by a qualified registered professional engineer, has a minimum static safety factor for the stability of the backfill of at least 1.3.
- (2) All spoil generated by the auger mining operation and any associated surface coal mining and reclamation operation, and any other reasonably available spoil shall be used to backfill the area. Reasonably available spoil shall include spoil generated by the mining operation and other spoil located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to the public safety or significant damage to the environment. For this purpose, the permit area shall include spoil in the immediate vicinity of the auger mining operation.
- (3) The coal seam mined shall be covered with a minimum of four feet of nonacid-, nontoxic-forming material and the backfill graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability.
- (4) Any remnant of the highwall shall be stable and not pose a hazard to the public health and safety or to the environment.
- (5) Spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbances will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 819.19, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-819.21. Auger mining; protection of underground mining.

Auger holes shall not extend closer than 500 feet (measured horizontally) to any abandoned or active underground mine workings, except as approved in accordance with 4VAC25-130-816.79.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 819.21, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July

17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

Part 823

Special Permanent Program Performance Standards—Operations on Prime Farmland

4VAC25-130-823.1. Scope and purpose.

This Part sets forth special environmental protection performance, reclamation, and design standards for surface coal mining and reclamation operations on prime farmland.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 823.1, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-823.4. Responsibilities.

(a) The U.S. Natural Resources Conservation Service within the State shall establish specifications for prime farmland soil removal, storage, replacement, and reconstruction.

(b) The division shall use the soil-reconstruction specifications of Paragraph (a) of this section to carry out its responsibilities under 4VAC25-130-785.17 and Subchapter VJ.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 823.4, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-823.11. Applicability.

The requirements of this Part shall not apply to:

(a) Surface facilities of underground mines that are actively used over extended periods of time and where such uses affect a minimal amount of land. Such uses shall meet the requirements of Part 817 for underground mining activities; or

(b) Disposal areas containing coal mine waste resulting from underground mines that is not technologically and economically feasible to store in underground mines or on non- prime farmland. The operator shall minimize the area of prime farmland used for such purposes.

(c) Prime farmland that has been excluded in accordance with 4VAC25-130-785.17(a).

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 823.11, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-823.12. Soil removal and stockpiling.

(a) Prime farmland soils shall be removed from the areas to be disturbed before drilling, blasting, or mining.

(b) The minimum depth of soil and soil materials to be removed and stored for use in the reconstruction of prime farmland shall be sufficient to meet the requirements of 4VAC25-130-823.14(b).

(c) Soil removal and stockpiling operations on prime farmland shall be conducted to--

(1) Separately remove the topsoil, or remove other suitable soil materials where such other soil materials will create a final soil having a greater productive capacity than that which exists prior to mining. If not utilized immediately, this material shall be placed in stockpiles separate from the spoil and all other excavated materials; and

(2) Separately remove the B or C soil horizon or other suitable soil material to provide the thickness of suitable soil required by 4VAC25-130-823.14(b), except as approved by the division where the B or C soil horizons would not otherwise be removed and where soil capabilities can be retained. If not utilized immediately, each horizon or other material shall be stockpiled separately from the spoil and all other excavated materials. Where combinations of such soil materials created by mixing have been shown to be equally or more favorable for plant growth than the B horizon, separate handling is not necessary.

(d) Stockpiles shall be placed within the permit area where they will not be disturbed or be subject to excessive erosion. If left in place for more than 30 days, stockpiles shall meet the requirements of 4VAC25-130-816.22 or 4VAC25-130-817.22.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 823.12, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-823.14. Soil replacement.

(a) Soil reconstruction specifications established by the U. S. Natural Resources Conservation Service shall be based upon the standards of the National Cooperative Soil Survey and shall

include, as a minimum, physical and chemical characteristics of reconstructed soils and soil descriptions containing soil-horizon depths, soil densities, soil pH, and other specifications such that reconstructed soils will have the capability of achieving levels of yield equal to, or higher than, those on nonmined prime farmland in the surrounding area.

(b) The minimum depth of soil and substitute soil material to be reconstructed shall be 48 inches, or a lesser depth equal to the depth to a subsurface horizon in the natural soil that inhibits or prevents root penetration, or a greater depth if determined necessary to restore the original soil productive capacity. Soil horizons shall be considered as inhibiting or preventing root penetration if their physical or chemical properties or water-supplying capacities cause them to restrict or prevent penetration by roots of plants common to the vicinity of the permit area and if these properties or capacities have little or no beneficial effect on soil productive capacity.

(c) The permittee shall replace and regrade the soil horizons or other root zone material with proper compaction and uniform depth. Excessive compaction shall be avoided.

(d) The permittee shall replace the B horizon, C horizon, or other suitable material specified in 4VAC25-130-823.12(c)(2) to the thickness needed to meet the requirements of Paragraph (b) of this section. In those areas where the B or C horizons were not removed but may have been compacted or otherwise damaged during the mining operation, the operator shall engage in deep tilling or other appropriate means to restore pre-mining capabilities.

(e) The permittee shall replace the topsoil or other suitable soil materials specified in 4VAC25-130-823.12(c)(1) as the final surface soil layer. This surface soil layer shall equal or exceed the thickness of the original surface soil layer, as determined by the soil survey.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 823.14, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-823.15. Revegetation and restoration of soil productivity.

(a) Following prime farmland soil replacement, the soil surface shall be stabilized with a vegetative cover or other means that effectively controls soil loss by wind and water erosion.

(b) Prime farmland soil productivity shall be restored in accordance with the following provisions:

(1) Measurement of soil productivity shall be initiated within 10 years after completion of soil replacement.

(2) Soil productivity shall be measured on a representative sample or on all of the mined and reclaimed prime farmland area using the reference crop determined under Paragraph (b)(6) of this section. A statistically valid sampling technique at a 90-percent or greater statistical

confidence level shall be used as approved by the division in consultation with the U. S. Natural Resources Conservation Service.

(3) The measurement period for determining average annual crop production (yield) shall be a minimum of three crop years prior to release of the permittee's performance bond.

(4) The level of management applied during the measurement period shall be the same as the level of management used on nonmined prime farmland in the surrounding area.

(5) Restoration of soil productivity shall be considered achieved when the average yield during the measurement period equals or exceeds the average yield of the reference crop established for the same period for nonmined soils of the same or similar texture or slope phase of the soil series in the surrounding area under equivalent management practices.

(6) The reference crop on which restoration of soil productivity is proven shall be selected from the crops most commonly produced on the surrounding prime farmland. Where row crops are the dominant crops grown on prime farmland in the area, the row crop requiring the greatest rooting depth shall be chosen as one of the reference crops.

(7) Reference crop yields for a given crop season are to be determined from--

(i) The current yield records of representative local farms in the surrounding area, with concurrence by the U.S. Natural Resources Conservation Service; or

(ii) The average county yields recognized by the U. S. Department of Agriculture, which have been adjusted by the U. S. Natural Resources Conservation Service for local yield variation within the county that is associated with differences between nonmined prime farmland soil and all other soils that produce the reference crop.

(8) Under either procedure in Paragraph (b)(7) of this section, the average reference crop yield may be adjusted, with the concurrence of the U.S. Natural Resources Conservation Service, for--

(i) Disease, pest, and weather-induced seasonal variations; or

(ii) Differences in specific management practices where the overall management practices of the crops being compared are equivalent.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 823.15, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

Part 824

Special Permanent Program Performance Standards—Mountaintop Removal

4VAC25-130-824.2. Objectives.

The objectives of this Part are to--

- (a) Enhance coal recovery;
- (b) Reclaim the land to equal or higher postmining use; and
- (c) Protect and enhance environmental and other values protected under the Act and this chapter.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 824.2, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-824.11. Mountaintop removal; performance standards.

(a) Surface coal mining activities may be conducted under a variance from the requirement of this Subchapter for restoring affected areas to their approximate original contour, if--

- (1) The division grants the variance under a permit, in accordance with 4VAC25-130-785.14;
- (2) The activities involve the mining of an entire coal seam running through the upper fraction of a mountain, ridge, or hill, by removing all of the overburden and creating a level plateau or gently rolling contour with no highwalls remaining;
- (3) An industrial, commercial, agricultural, residential, or public facility (including recreational facilities) use is proposed and approved for the affected land;
- (4) The alternative land-use requirements of 4VAC25-130-816.133(a) through (c) are met;
- (5) All applicable requirements of this chapter, other than the requirements to restore affected areas to their approximate original contour, are met;
- (6) An outcrop barrier of sufficient width, consisting of the toe of the lowest coal seam, and its associated overburden, are retained to prevent slides and erosion, except that the division may permit an exception to the retention of the coal barrier requirement if the following conditions are satisfied:
 - (i) The proposed mine site was mined prior to May 3, 1978, and the toe of the lowest seam has been removed; or
 - (ii) A coal barrier adjacent to a head-of-hollow fill may be removed after the elevation of a head-of-hollow fill attains the elevation of the coal barrier if the head-of-hollow fill provides the stability otherwise ensured by the retention of a coal barrier;
- (7) The final graded slopes on the mined area are less than 1v:5h so as to create a level

plateau or gently rolling configuration, and the out slopes of the plateau do not exceed 1v:2h except where engineering data substantiates, and the division finds, in writing, and includes in the permit under 4VAC25-130-785.14, that a minimum static safety factor of 1.5 will be attained;

(8) The resulting level or gently rolling contour is graded to drain inward from the out slope, except at specified points where it drains over the out slope in stable and protected channels. The drainage shall not be through or over a valley or head-of-hollow fill;

(9) Natural watercourses below the lowest coal seam mined are not damaged;

(10) All waste and acid-forming or toxic-forming materials, including the strata immediately below the coal seam, are covered with non-toxic spoil to prevent pollution and achieve the approved postmining land use; and

(11) Spoil is placed on the mountaintop bench as necessary to achieve the postmining land use approved under Paragraphs (a)(3) and (a)(4) of this section. All excess spoil material not retained on the mountaintop shall be placed in accordance with 4VAC25-130-816.41, 4VAC25-130-816.43 and 4VAC25-130-816.71 through 4VAC25-130-816.75.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 824.11, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

Part 825

Special Permanent Program Performance Standards—Remining Areas with Pollutational Discharges

4VAC25-130-825.11. Operational requirements.

A permittee who receives an authorization to mine areas with preexisting pollutational discharges under 4VAC25-130-785.19 shall comply with the requirements of this Subchapter except as specifically modified by this Part. The permittee shall also:

- (1) Implement the approved water quality and quantity monitoring program for the pollution abatement area until the requirements of 4VAC25-130-825.14 are met.
- (2) Implement the approved abatement plan.
- (3) Notify the division immediately prior to the completion of each step of the abatement plan.
- (4) Provide progress reports to the division within 30 days after the completion of each step of the abatement program that all work has been performed in accordance with the terms and conditions of the pollution abatement authorization and the approved maps, plans, cross-sections, and specifications.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 825.11, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-825.12. Treatment of discharges.

(a) Except for preexisting discharges from or on the pollution abatement area for which authorization is granted under 4VAC25-130-785.19, the permittee shall comply with 4VAC25-130-816.42 and 4VAC25-130-817.42.

(b) The permittee shall treat the preexisting discharges from or on the pollution abatement area for which authorization is granted under 4VAC25-130-785.19 to comply with the effluent limitations established by best professional judgment. The effluent limitations established by best professional judgment shall not allow discharge of pollutants in excess of the baseline pollution load. Any discharge from or affected by the remaining operation shall be in accordance with the applicable State water quality standards.

(c) A permittee required to treat preexisting discharges will be allowed to discontinue treating the discharges under Subsection (b) when the permittee affirmatively demonstrates to the division that:

- (1) The preexisting discharges are meeting the effluent limitations established by Subsection (b) as shown by all ground and surface water monitoring conducted by the permittee or the division.
- (2) Surface coal mining activities under the permit, including the pollution abatement area, are being or were conducted under the requirements of the permit and the authorization and this Subchapter, except as specifically modified by this Part.
- (3) The permittee has implemented each step of the abatement plan as approved in the authorization.

(d) If after discontinuance of treatment of discharges under Subsection (c) the discharges fail to meet the effluent limitations established by Subsection (b), the permittee shall reinstitute treatment of the discharges under Subsection (b). A permittee who reinstates treatment under this Subsection will be allowed to discontinue treatment if the requirements of Subsection (c) are met.

(e) Discontinuance of treatment under Subsection (c) may not be deemed or construed to be or to authorize a release of bond under 4VAC25-130-825.14.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 825.12, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982;

December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-825.13. Request for bond release.

4VAC25-130-800.40, 4VAC25-130-801.17 and 4VAC25-130-801.18 shall apply to the release of bonds for pollution abatement areas except as modified by this Part.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 825.13, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-825.14. Criteria and schedule for release of bonds on pollution abatement areas.

(a) The division will release up to 50% of the amount of bond for the authorized pollution abatement area if the permittee demonstrates and the division finds that:

(1) The surface coal mining activities were conducted on the permit area, including the pollution abatement area, under the requirements of the permit and the authorization and this chapter, except as specifically modified by this Part.

(2) The permittee has satisfactorily completed backfilling, regrading, and drainage control under the approved reclamation plan.

(3) The permittee has properly implemented each step of the pollution abatement plan approved and authorized under this chapter.

(4) The permittee has not caused degradation of the baseline pollution load for a period of a minimum of six months prior to the submittal of the request for bond release under this Part and until the bond release is approved as shown by all ground and surface water monitoring conducted by the permittee under 4VAC25-130-825.11 or conducted by the division.

(5) The permittee has not caused or contributed to additional surface water pollution by re-affecting or mining the pollution abatement area.

(b) The division will release an additional amount not to exceed 35% of the amount of bond for the authorized pollution abatement area if the permittee demonstrates and the division finds that:

(1) The permittee has replaced the topsoil or topsoil substitute, completed final grading, planting and established revegetation under the approved reclamation plan.

(2) The permittee has not caused or contributed to additional surface water pollution by re-affecting or mining the pollution abatement area.

(3) The permittee has complied with either of the following:

(i) Achieved the actual improvement of the baseline pollution load described in the approved abatement plan and shown by all ground and surface water monitoring conducted by the permittee or the division for the period of time provided in the abatement plan after completion of backfilling, final grading, drainage control, topsoiling, and establishment of revegetation.

(ii) Achieved all of the following:

(A) At a minimum has not caused degradation of the baseline pollution load as shown by all ground and surface water monitoring conducted by the permittee or the division for a period of 12 months from the discontinuance of treatment under 4VAC25-130-825.12(d), if backfilling, final grading, drainage control, topsoiling, and establishment of revegetation have been completed.

(B) Conducted all measures provided in the approved abatement plan and additional measures specified by the division in writing at the time of initial bond release under Subsection (a) for the area requested for bond release.

(C) Caused aesthetic or other environmental improvements or the elimination of public health and safety problems by re-mining and re-affecting the pollution abatement area.

(D) Stabilized the pollution abatement area.

(c) The division will release the remaining portion of the amount of bond on the authorized pollution abatement area if the permittee demonstrates and the division finds that:

(1) The permittee has successfully completed all the approved abatement and reclamation plans, and the pollution abatement area is capable of supporting the postmining land use approved under 4VAC25-130-816.133 and 4VAC25-130-817.133.

(2) The permittee has complied with the requirements of the permit and the authorization, and this chapter, except as specifically modified by this Part.

(3) The permittee has not caused degradation of the baseline pollution load from the time of bond release under Subsection (b).

(4) The applicable liability period has expired under 4VAC25-130-800.13.

(5) If treatment has been initiated in accordance with 4VAC25-130-825.12(d) after bond release under Subsections (a) or (b) of this section, the permittee has not caused degradation of the baseline pollution load for a period of five years from the discontinuance of treatment under 4VAC25-130-825.12(c).

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 825.14, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

Part 827

Permanent Program Performance Standards—Coal Preparation Plants Not Located Within the Permit Area of a Mine

4VAC25-130-827.1. Scope.

This Part sets forth requirements for coal preparation plants operated in connection with a coal mine but outside the permit area for a specific mine.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 827.1, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-827.11. General requirements.

Each person who operates a coal preparation plant subject to this Part shall obtain a permit in accordance with 4VAC25-130-785.21, obtain a bond in accordance with Subchapter VJ, and operate that plant in accordance with the requirements of this Part.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 827.11, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-827.12. Coal preparation plants; performance standards.

Construction, operation, maintenance, modification, reclamation, and removal activities at coal preparation plants shall comply with the following:

- (a) Signs and markers for the coal preparation plant, coal processing waste disposal area, and water-treatment facilities shall comply with 4VAC25-130-816.11.
- (b) Any stream channel diversion shall comply with 4VAC25-130-816.43.

(c) Drainage from any disturbed area related to the coal preparation plant shall comply with 4VAC25-130-816.45 through 4VAC25-130-816.47, and all discharges from these areas shall meet the requirements of 4VAC25-130-816.41 and 4VAC25-130-816.42 and any other applicable State or Federal law.

(d) Permanent impoundments associated with coal preparation plants shall meet the requirements of 4VAC25-130-816.49 and 4VAC25-130-816.56. Dams constructed of, or impounding, coal processing waste shall comply with 4VAC25-130-816.84.

(e) Disposal of coal processing waste, noncoal mine waste, and excess spoil shall comply with 4VAC25-130-816.81, 4VAC25-130-816.83, 4VAC25-130-816.84, 4VAC25-130-816.87, 4VAC25-130-816.89, and 4VAC25-130-816.71 through 4VAC25-130-816.75, respectively.

(f) Fish, wildlife, and related environmental values shall be protected in accordance with 4VAC25-130-816.97.

(g) Support facilities related to the coal preparation plant shall comply with 4VAC25-130-816.181.

(h) Roads shall comply with 4VAC25-130-816.150 through 4VAC25-130-816.152.

(i) Cessation of operations shall be in accordance with 4VAC25-130-816.131 and 4VAC25-130-816.132.

(j) Erosion and air pollution attendant to erosion shall be controlled in accordance with 4VAC25-130-816.95.

(k) Adverse effects upon, or resulting from, nearby underground coal mining activities shall be minimized by appropriate measures including, but not limited to, compliance with 4VAC25-130-816.79.

(l) Reclamation shall follow proper topsoil handling, backfilling and grading, revegetation, and postmining land use procedures in accordance with 4VAC25-130-816.22, 4VAC25-130-816.100, 4VAC25-130-816.102, 4VAC25-130-816.104, 4VAC25-130-816.106, 4VAC25-130-816.111, 4VAC25-130-816.113, 4VAC25-130-816.114, 4VAC25-130-816.116, and 4VAC25-130-816.133, respectively.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 827.12, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

Part 828

Special Permanent Program Performance Standards—In Situ Processing

4VAC25-130-828.2. Objectives.

This Part is intended to ensure that all in situ processing activities are conducted in a manner which preserves and enhances environmental values in accordance with the Act. This Part provides additional performance, reclamation and design standards to reflect the nature of in situ processing.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 828.2, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-828.11. In situ processing; performance standards.

- (a) The person who conducts in situ processing activities shall comply with Part 817 and this section.
- (b) In situ processing activities shall be planned and conducted to minimize disturbance to the prevailing hydrologic balance by:
- (1) Avoiding discharge of fluids into holes or wells, other than as approved by the division;
 - (2) Injecting process recovery fluids only into geologic zones or intervals approved as production zones by the division;
 - (3) Avoiding annular injection between the wall of the drill hole and the casing; and
 - (4) Preventing discharge of process fluid into surface waters.
- (c) Each person who conducts in situ processing activities shall submit for approval as part of the application for permit under 4VAC25-130-785.22, and follow after approval, a plan that ensures that all acid-forming, toxic-forming, or radioactive gases, solids, or liquids constituting a fire, health, safety, or environmental hazard and caused by the mining and recovery process are promptly treated, confined, or disposed of, in a manner that prevents contamination of ground and surface waters, damage to fish, wildlife, and related environmental values, and threats to the public health and safety.
- (d) Each person who conducts in situ processing activities shall prevent flow of the process recovery fluid:
- (1) Horizontally beyond the affected area identified in the permit; and
 - (2) Vertically into overlying or underlying aquifers.
- (e) Each person who conducts in situ processing activities shall restore the quality of affected ground water in the permit and adjacent area, including ground water above and below the production zone, to the approximate premining levels or better, to ensure that the potential for use of the ground water is not diminished.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 828.11, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-828.12. In situ processing; monitoring.

- (a) Each person who conducts in situ processing activities shall monitor the quality and quantity of surface and ground water and the subsurface flow and storage characteristics, in a manner approved by the division under 4VAC25-130-817.41, to measure changes in the quantity and quality of water in surface and ground water systems in the permit area and in adjacent areas.
- (b) Air and water quality monitoring shall be conducted in accordance with monitoring programs approved by the division as necessary according to appropriate Federal and State air and water quality standards.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 828.12, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

Part 840

Inspection and Enforcement—General

4VAC25-130-840.11. Inspections by the division.

- (a) The division shall conduct an average of at least one partial inspection per month of each active surface coal mining and reclamation operation under its jurisdiction, and shall conduct such partial inspections of each inactive surface coal mining and reclamation operation under its jurisdiction as are necessary to ensure effective enforcement of the Act and this chapter. A partial inspection is an on-site or aerial review of a permittee's compliance with some of the permit conditions and requirements imposed under the Act and this chapter.
- (b) The division shall conduct an average of at least one complete inspection per calendar quarter of each active or inactive surface coal mining and reclamation operation under its jurisdiction. A complete inspection is an on-site review of a permittee's compliance with all permit conditions and requirements imposed under the Act and this chapter, within the entire area disturbed or affected by the surface coal mining and reclamation operations.
- (c) The division shall conduct such inspections of coal explorations as are necessary to ensure compliance with the Act and this chapter.
- (d) (1) Aerial inspections shall be conducted in a manner which reasonably ensures the identification and documentation of conditions at each surface coal mining and reclamation site

inspected.

(2) Any potential violation observed during an aerial inspection shall be investigated on site within three days; provided, that any indication of a condition, practice or violation constituting cause for the issuance of a cessation order under § 45.1-245 of the Act shall be investigated on site immediately, and provided further, that an on-site investigation of a potential violation observed during an aerial inspection shall not be considered to be an additional partial or complete inspection for the purposes of paragraphs (a) and (b) of this section.

(e) The inspections required under paragraphs (a), (b), (c) and (d) of this section shall:

(1) Be carried out on an irregular basis, so as to monitor compliance at all operations, including those which operate nights, weekends, or holidays;

(2) Occur without prior notice to the permittee or any agent or employee of such permittee, except for necessary on-site meetings; and

(3) Include the prompt filing of inspection reports adequate to enforce the requirements of the Act and this chapter.

(f) For the purposes of this section, an inactive surface coal mining and reclamation operation is one for which:

(1) The division has secured from the permittee the written notice provided for under 4VAC25-130-816.131(b) or 4VAC25-130-817.131(b); or

(2) Reclamation has been completed to the level established in 4VAC25-130-800.40 as Phase II.

(g) Abandoned site means a surface coal mining and reclamation operation for which the division has found in writing that:

(1) All surface and underground coal mining and reclamation activities at the site have ceased;

(2) The division has issued at least one notice of violation or the interim program equivalent, and either:

(i) Is unable to serve the notice despite diligent efforts to do so; or

(ii) The notice was served and has progressed to a failure-to-abate cessation order or the interim program equivalent;

(3) The division:

(i) Is taking action to ensure that the permittee and operator, and owners and controllers of the permittee and operator, will be precluded from receiving future permits while violations continue at the site; and

(ii) Is taking action pursuant to §§ 45.1-245 C, 45.1-245 E, 45.1-246 E, or § 45.1-246 F of the Act to ensure that abatement occurs or that there will not be a recurrence of the

failure-to-abate, except where after evaluating the circumstances it concludes that further enforcement offers little or no likelihood of successfully compelling abatement or recovering any reclamation costs; and

(4) Where the site is, or was, permitted or bonded:

(i) The permit has either expired or been revoked, or permit revocation proceedings have been initiated and are being pursued diligently; and

(ii) The division has initiated and is diligently pursuing forfeiture of, or has forfeited, the any available performance bond.

(h) In lieu of the inspection frequency established in paragraphs (a) and (b) of this section, the division shall inspect each abandoned site on a set frequency commensurate with the public health and safety and environmental consideration present at each specific site, but in no case shall the inspection frequency be set at less than one complete inspection per calendar year.

(1) In selecting an alternate inspection frequency authorized under the paragraph above, the division shall first conduct a complete inspection of the abandoned site and provide public notice under paragraph (h)(2) of this section. Following the inspection and public notice, the division shall prepare and maintain for public review a written finding justifying the alternative inspection frequency selected. This written finding shall justify the new inspection frequency by affirmatively addressing in detail all of the following criteria:

(i) How the site meets each of the criteria under the definition of an abandoned site under paragraph (g) of this section and thereby qualifies for a reduction in inspection frequency;

(ii) Whether, and to what extent, there exists on the site impoundments, earthen structures or other conditions that pose, or may reasonably be expected to ripen into, imminent dangers to the health or safety of the public or significant environmental harms to land, air, or water resources;

(iii) The extent to which existing impoundments or earthen structures were constructed and certified in accordance with prudent engineering designs approved in the permit;

(iv) The degree to which erosion and sediment control is present and functioning;

(v) The extent to which the site is located near or above urbanized areas, communities, occupied dwellings, schools and other public or commercial buildings and facilities;

(vi) The extent of reclamation completed prior to abandonment and the degree of stability of unreclaimed areas, taking into consideration the physical characteristics of the land mined and the extent of settlement or revegetation that has occurred naturally with them; and

(vii) Based on a review of the complete and partial inspection report record for the site during at least two consecutive years, the rate at which adverse environmental or public health and safety conditions have and can be expected to progressively deteriorate.

(2) The public notice and opportunity to comment required under paragraph (h)(1) of this

section shall be provided as follows:

(i) The division shall place a notice in the newspaper with the broadest circulation in the locality of the abandoned mine site providing the public with a 30-day period in which to submit written comments.

(ii) The public notice shall contain the permittee's name, the permit number, the precise location of the land affected, the inspection frequency proposed, the general reasons for reducing the inspection frequency, the bond status of the permit, the telephone number and address of the regulatory authority where written comments on the reduced inspection frequency may be submitted, and the closing date of the comment period.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 840.11, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 15, Issue 6, eff. January 6, 1999.

4VAC25-130-840.12. Right of entry.

(a) Representatives of the Director are authorized to enter upon and through any coal exploration or surface coal mining and reclamation operation without advance notice upon presentation of appropriate credentials. No search warrant shall be required, except that entry into buildings shall be conducted only upon consent of the permittee or by search warrant.

(b) Representatives of the Director are authorized to inspect any monitoring equipment or method of exploration or operation, and to have access to and copy any records required under the Act or this chapter. Representatives of the Director may exercise these rights at reasonable times, without advance notice, upon presentation of appropriate credentials. No search warrant shall be required, except that entry into buildings shall be conducted only upon consent of the permittee or by search warrant.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 840.12, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-840.14. Availability of records.

(a) The division shall make available to the OSM, upon request, copies of all documents relating to applications for and approvals of existing, new, or revised coal exploration approvals or surface coal mining and reclamation operation permits and all documents relating to inspection and enforcement actions.

(b) Copies of all records, reports, inspection materials, or information obtained by the division shall be made immediately and conveniently available to the public in the area of mining until at least five years after expiration of the period during which the subject operation is active or is covered by any portion of a reclamation bond, except-

(1) As otherwise provided by state law; and

(2) For information not required to be made available under 4VAC25-130-772.15 and 4VAC25-130-773.13(d) or subdivision (d) of this section.

(c) The division shall ensure compliance with subdivision (b) of this section by either:

(1) Making copies of all records, reports, inspection materials, and other subject information available for public inspection at a federal, state, or local government office in the county where the mining is occurring or proposed to occur; or,

(2) At the division's option in accordance with the Virginia Freedom of Information Act (Chapter 21 (§ 2.1-340 et seq.) of Title 2.1 of the Code of Virginia), providing copies of subject information promptly by mail at the request of any resident of the area where the mining is occurring or is proposed to occur, provided, that the division shall maintain for public inspection, at a federal, state, or local government office in the county where the mining is occurring or proposed to occur, a description of the information available for mailing and the procedure for obtaining such information. A list of government offices where information may be inspected can be obtained on request by contacting the division's Big Stone Gap office.

(d) In order to protect preparation for hearings and enforcement proceedings, the OSM and the division may enter into agreements regarding procedures for the special handling of investigative and enforcement reports and other such materials.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 840.14, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Volume 29, Issue 13, eff. March 27, 2013.

4VAC25-130-840.16. Compliance conference.

(a) A permittee may request an on-site compliance conference with an authorized representative of the Director to review the compliance status of any condition or practice proposed at any coal exploration or surface coal mining and reclamation operation. Any such conference shall not

constitute an inspection within the meaning of Section 45.1-244 of the Act and 4VAC25-130-840.11.

(b) The division may accept or refuse any request to conduct a compliance conference under Paragraph (a).

(c) The authorized representative at any compliance conference shall review such proposed conditions and practices in order to advise whether any such condition or practice may become a violation of any requirement of the Act, this chapter, or any applicable permit or exploration approval.

(d) Neither the holding of a compliance conference under this section nor any opinion given by the authorized representative at such a conference shall affect:

(1) Any rights or obligations of the division or of the permittee with respect to any inspection, notice of violation or cessation order, whether prior or subsequent to such compliance conference; or

(2) The validity of any notice of violation or cessation order issued with respect to any condition or practice reviewed at the compliance conference.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 840.16, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

Part 842

Inspections

4VAC25-130-842.11. Immediate inspections.

(a) An authorized representative of the Director shall immediately conduct an inspection when the authorized representative has reason to believe on the basis of information available to him that there exists a violation of the Act, this chapter, or any condition of a permit or an exploration approval, or that there exists any condition, practice, or violation which creates an imminent danger to the health or safety of the public or is causing or could reasonably be expected to cause a significant, imminent environmental harm to land, air, or water resources.

(b) An authorized representative shall have reason to believe that a violation, condition or practice exists if the facts alleged by the informant would, if true, constitute a condition, practice or violation referred to in Paragraph (a).

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 842.11, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16,

1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-842.12. Citizens' requests for inspections.

(a) A person may request an inspection under 4VAC25-130-842.11(a), by furnishing to an authorized representative of the Director a signed, written statement (or an oral report followed by a signed, written statement) giving the authorized representative reason to believe that a violation, condition or practice referred to in 4VAC25-130-842.11(a) exists and setting forth a phone number and address where the person can be contacted.

(b) The identity of any person supplying information to the division relating to a possible violation or imminent danger or harm shall remain confidential with the division, if requested by that person, unless that person elects to accompany the inspector on the inspection, or unless disclosure is required under the Virginia Freedom of Information Act (Chapter 21 (§ 2.1-340 et seq.) of Title 2.1 of the Code of Virginia).

(c) If an inspection is conducted as a result of information provided to the division by a person as described in Paragraph (a) of this section, the person shall be notified as far in advance as practicable when the inspection is to occur and shall be allowed to accompany the authorized representative of the Director during the inspection. It shall be the responsibility of the person to provide any or all safety equipment needed to accompany the division's inspector during the mine site inspection. Such person has a right of entry to, upon and through the coal exploration or surface coal mining and reclamation operation about which he supplied information, but only if he is in the presence of and is under the control, direction, and supervision of the authorized representative while on the mine property. Such right of entry does not include a right to enter buildings without consent of the person in control of the building or without a search warrant.

(d) Within 10 days of the inspection or, if there is no inspection, within 15 days of receipt of the person's written statement, the division shall send the person the following:

- (1) If an inspection was made, a description of the enforcement action taken, which may consist of copies of the inspection report and all notices of violation and cessation orders issued as a result of the inspection, or an explanation of why no enforcement action was taken;
- (2) If no inspection was conducted, an explanation of the reason why; and
- (3) An explanation of the person's right, if any, to informal review of the action or inaction of the division under 4VAC25-130-842.15.

(e) The division shall give copies of all materials in Paragraphs (d)(1) and (d)(2) of this section within the time limits specified in those Paragraphs to the person alleged to be in violation, except that the name of the person supplying information shall be removed unless disclosure of the person's identity is permitted under Paragraph (b) of this section.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 842.12, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982;

December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-842.14. Review of adequacy and completeness of inspections.

Any person who is or may be adversely affected by a surface coal mining and reclamation operation or a coal exploration operation may notify the division in writing of any alleged failure on the part of the division to make adequate and complete or periodic inspections as provided in 4VAC25-130-840.11 and 4VAC25-130-842.11. The notification shall include sufficient information to create a reasonable belief that 4VAC25-130-840.11 and 4VAC25-130-842.11 are not being complied with and to demonstrate that the person is or may be adversely affected. The division shall within 30 days of receipt of the notification determine whether 4VAC25-130-840.11 and 4VAC25-130-842.11 are being complied with, and if not, shall immediately order an inspection to remedy the noncompliance. The division shall furnish the complainant with a written statement of the reasons for such determination and the actions, if any, taken to remedy the noncompliance.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 842.14, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-842.15. Review of decision not to inspect or enforce.

(a) Any person who is or may be adversely affected by a coal exploration or surface coal mining and reclamation operation may ask the division to review informally an authorized representative's decision not to inspect or take appropriate enforcement action with respect to any violation alleged by that person in a request for inspection under 4VAC25-130-842.12. The request for review shall be in writing and include a statement of how the person is or may be adversely affected and why the decision merits review.

(b) The division shall conduct the review and inform the person, in writing, of the results of the review within 30 days of receipt of the request. The person alleged to be in violation shall also be given a copy of the results of the review, except that the name of the person who is or may be adversely affected shall not be disclosed unless confidentiality has been waived or disclosure is required under the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).

(c) Informal review under this section shall not affect any right to formal review under § 45.1-249 of the Act or to a citizen's suit under § 45.1-246.1 of the Act.

(d) Any person who requested a review of a decision not to inspect or enforce under this section and who is or may be adversely affected by any determination made under subsection (b) of this section may request review of that determination by filing within 30 days of the division's

determination an application for formal review and request for hearing under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). All requests for hearing or appeals for review and reconsideration made under this section shall be filed with the Director, Division of Mined Land Reclamation, Department of Mines, Minerals and Energy, Post Office Drawer 900, Big Stone Gap, Virginia 24219.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 842.15, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 23, Issue 13, eff. April 4, 2007; Volume 25, Issue 12, eff. March 18, 2009.

Part 843

Enforcement Procedures

4VAC25-130-843.11. Cessation orders.

(a)(1) An authorized representative of the Director shall immediately order a cessation of a coal exploration or a surface coal mining and reclamation operation or of the relevant portion thereof, if the representative finds, on the basis of any inspection, any condition or practice, or any violation of the Act, this chapter, or any condition of a permit or an exploration approval imposed under the Act, or this chapter which:

- (i) Creates an imminent danger to the health or safety of the public; or
- (ii) Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(2) Surface coal mining operations conducted by any person without a valid surface coal mining permit constitute a condition or practice which causes or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, unless such operations:

- (i) Are an integral, uninterrupted extension of previously permitted operations, and the person conducting such operations has filed a timely and complete application for a permit to conduct such operations; or
- (ii) Were conducted lawfully without a permit under this chapter because no permit under this chapter has been required for such operations by the division.

(3) If the cessation ordered under Paragraph (a)(1) of this section will not completely abate the imminent danger or harm in the most expeditious manner physically possible, the authorized representative of the Director shall impose affirmative obligations on the permittee to abate the imminent danger or significant environmental harm. The order shall specify the time by which abatement shall be accomplished.

(b)(1) When a notice of violation has been issued under 4VAC25-130-843.12(a) and the permittee fails to abate the violation within the abatement period fixed or subsequently extended by the authorized representative, the authorized representative of the Director shall immediately order a cessation of coal exploration or surface coal mining and reclamation operations, or of the portion relevant to the violation.

(2) A cessation order issued under this Paragraph (b) shall require the permittee to take all steps the authorized representative of the Director deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.

(c) A cessation order issued under Paragraphs (a) or (b) of this section shall be in writing, signed by the authorized representative who issues it, and shall set forth with reasonable specificity: (1) The nature of the condition, practice or violation; (2) the remedial action or affirmative obligation required, if any, including interim steps, if appropriate; (3) the time established for abatement, including a schedule for meeting any interim steps, if appropriate; and (4) a reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies. The order shall remain in effect until the condition, practice or violation resulting in the issuance of the cessation order has been abated or until vacated, modified or terminated in writing by an authorized representative of the Director, or until the order expires pursuant to Section 45.1-245(D) of the Act and 4VAC25-130-843.15.

(d) Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of any order unless otherwise provided in the order.

(e) An authorized representative of the Director may modify, terminate or vacate a cessation order for good cause, and may extend the time for abatement if the failure to abate within the time previously set was not caused by the permittee's lack of diligence.

(f) An authorized representative of the Director shall terminate a cessation order by written notice to the permittee when the representative determines that all conditions, practices or violations listed in the order have been abated. Termination shall not affect the right of the division to assess civil penalties under Part 845 of this chapter for those violations.

(g) Within 60 days after issuing a cessation order, the division shall notify in writing any person who has been identified under 4VAC25-130-773.17(h) and 4VAC25-130-778.13(c) and (d) as owning or controlling the permittee, that the cessation order was issued and that the person has been identified as an owner or controller.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 843.11, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-843.12. Notices of violation.

(a) An authorized representative of the director shall issue a notice of violation if, on the basis of

an inspection pursuant to § 45.1-244 of the Act, the representative finds a violation of the Act, this chapter, or any condition of a permit or an exploration approval imposed under the Act, or this chapter, which does not create an imminent danger or harm for which a cessation order must be issued under 4VAC25-130-843.11.

(b) A notice of violation issued under this section shall be in writing, signed by the authorized representative who issues it, and shall set forth with reasonable specificity:

- (1) The nature of the violation;
- (2) The remedial action required, which may include interim steps;
- (3) A reasonable time for abatement, which may include time for accomplishment of interim steps; and
- (4) A reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies.

(c) An authorized representative of the director may extend the time set for abatement or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by the permittee's lack of diligence. The total time for abatement under a notice of violation, including all extensions, shall not exceed 90 days from the date of issuance, except upon a showing by the permittee that it is not feasible to abate the violation within 90 calendar days due to one or more of the circumstances in subsection (f) of this section. An extended abatement date pursuant to this section shall not be granted when the permittee's failure to abate within 90 days has been caused by a lack of diligence or intentional delay by the permittee in completing the remedial action required.

(d)(1) If the permittee fails to meet the time set for abatement, the authorized representative shall issue a cessation order under 4VAC25-130-843.11(b).

(2) If the permittee fails to meet the time set for accomplishment of any interim step the authorized representative may issue a cessation order under 4VAC25-130-843.11 (b).

(e) An authorized representative of the director shall terminate a notice of violation by written notice to the permittee when the representative determines that all violations listed in the notice of violation have been abated. Termination shall not affect the right of the division to assess civil penalties under Part 845 for those violations.

(f) Circumstances which may qualify a coal exploration or a surface coal mining operation for an abatement period of more than 90 days are:

- (1) Where the permittee of an on-going permitted operation has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans but such permit or approval has not been or will not be issued within 90 days after a valid permit expires or is required, for reasons not within the control of the permittee;
- (2) Where there is a valid judicial or administrative order precluding abatement within 90 days as to which the permittee has diligently pursued all rights of appeal and as to which the permittee has no other effective legal remedy;
- (3) Where the permittee cannot abate within 90 days due to a labor strike;

(4) Where climatic conditions preclude abatement within 90 days, or where, due to climatic conditions, abatement within 90 days clearly would cause more environmental harm than it would prevent; or

(5) Where abatement within 90 days requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act of 1977.

(g) Whenever an abatement time in excess of 90 days is permitted, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public or the environment.

(h) If any of the conditions in subsection (f) of this section exists, the permittee may request the authorized representative to grant an abatement period exceeding 90 days. The authorized representative shall not grant such an abatement period without the concurrence of the director and the abatement period granted shall not exceed the shortest possible time necessary to abate the violation. The permittee shall have the burden of establishing by clear and convincing proof that he is entitled to an extension under the provisions of 4VAC25-130-843.12 (c) and (f). In determining whether or not to grant an abatement period exceeding 90 days the authorized representative may consider any relevant written or oral information from the permittee or any other source. The authorized representative shall promptly and fully document in the file his reasons for granting or denying the request. The authorized representative's immediate supervisor shall review this document before concurring in or disapproving the extended abatement date and shall promptly and fully document the reasons for his concurrence or disapproval in the file.

(i) No extension granted under subsection (h) of this section may exceed 90 days in length. Where the condition or circumstance which prevented abatement within 90 days exists at the expiration of any such extension, the permittee may request a further extension in accordance with the procedures of subsection (h) of this section.

(j) Any determination made under subsection (h) of this section shall be subject to formal review pursuant to the provisions of the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 843.12, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 23, Issue 13, eff. April 4, 2007.

4VAC25-130-843.13. Suspension or revocation of permits; pattern of violations.

(a)(1) The director shall issue a show cause order to a permittee requiring justification as to why his permit and right to mine under the Act should not be suspended or revoked, if the director determines that a pattern of violations of any requirements of the Act, this chapter, or any permit condition required by the Act exists or has existed, and that the violations were caused by

the permittee's willful or unwarranted failure to comply with those requirements or conditions, or if the permittee failed to pay the final civil penalty assessment as required by 4VAC25-130-845.20. Violations by any person conducting surface coal mining operations on behalf of the permittee shall be attributed to the permittee, unless the permittee establishes that they were acts of deliberate sabotage.

(2) The director may determine that a pattern of violations exists or has existed based upon two or more inspections of the permit area within any 12-month period, after considering the circumstances, including:

- (i) The number of violations, cited on more than one occasion, of the same or related requirements of the Act, this chapter, or the permit;
- (ii) The number of violations, cited on more than one occasion, of different requirements of the Act, this chapter, or the permit; and
- (iii) The extent to which the violations were isolated departures from lawful conduct.

(3) The director shall promptly review the history of violations of any permittee who has been cited for violations of the same or related requirements of the Act, this chapter, or the permit during three or more inspections of the permit area within any 12-month period. If, after such review, the director determines that a pattern of violations exists or has existed, he shall issue a show cause order as provided in subdivision (a) (1) of this section.

(4)(i) In determining the number of violations within any 12-month period, the director shall consider only violations issued as a result of an inspection carried out pursuant to 4VAC25-130-840.11, 4VAC25-130-842.11 and 4VAC25-130-842.12.

(ii) The director may not consider violations issued as a result of inspections other than those mentioned in subdivision (a) (4) (i) of this section in determining whether to exercise his discretion under subdivision (a) (2) of this section, except as evidence of the "willful" or "unwarranted" nature of the permittee's failure to comply.

(5) Whenever a permittee fails to abate a violation contained in a notice of violation or cessation order within the abatement period set in the notice or order or as subsequently extended, the division shall review the permittee's history of violations to determine whether a pattern of violations exists pursuant to this section, and shall issue a show cause order as appropriate pursuant to 4VAC25-130-845.15(b)(2).

(b) The permittee shall have 15 days from receipt of the show cause order to file an answer and request a formal public hearing in writing. The director shall give 30 days written notice of the date, time and place of the hearing to the permittee, and any intervenor. The public hearing shall be conducted in accordance with § 2.2-4020 of the Virginia Administrative Process Act. The director shall publish the notice, if practicable, in a newspaper of general circulation in the area of the surface coal mining and reclamation operations, and shall post it at the division's Big Stone Gap office.

(c) Within 30 days after the hearing, the hearing officer shall issue a written decision as to whether a pattern of violations exists, and, if appropriate, an order. The decision and order shall

be final, subject to the review and reconsideration by the director or his designee provided in subsection (e) of this section. If the decision and order revoke or suspend the permit and the permittee's right to mine under the Act, the permittee shall immediately cease surface coal mining operations on the permit area and shall:

- (1) If the permit and right to mine under the Act are revoked, complete reclamation within the time specified in the order; or
- (2) If the permit and the right to mine under the Act are suspended, complete all affirmative obligations to abate all conditions, practices or violations, as specified in the order.

(d) Within 14 days after the issuance of a decision or order, the permittee, or any person who participated in the hearing and who has an interest which is or may be adversely affected by the hearing officer's decision may appeal to the director, or his designee (who shall not be the same person who issued the show cause order) for review of the record and reconsideration of the hearing officer's decision. The director or his designee may also, on his own motion, with notice to the parties, made within 14 days of the hearing officer's decision, review the record and reconsider the hearing officer's decision. No further evidence will be allowed in connection with such review and reconsideration but the director or his designee may hear further arguments, and may also after considering the record, remand any case for further hearing if he considers such action necessary to develop the facts. Within 30 days of the appeal or motion for review and reconsideration, the director or his designee shall complete his review of the hearing officer's decision and issue a final decision thereon.

(e) All requests for hearing before a hearing officer, or appeals for review and reconsideration, made under this section, and all notices of appeal for judicial review of a hearing officer's final decision or a final decision on review and reconsideration, shall be filed with the Director, Division of Mined Land Reclamation, Department of Mines, Minerals and Energy, Post Office Drawer 900, Big Stone Gap, Virginia 24219.

(f) Any person who owns or controls or has owned or controlled any operations on which the permit has been revoked pursuant to this section may apply for reinstatement pursuant to 4VAC25-130-800.52.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 843.13, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 23, Issue 13, eff. April 4, 2007.

4VAC25-130-843.14. Service of notices of violation, cessation orders, and show cause orders.

(a) A notice of violation, cessation order, or show cause order shall be served on the person to whom it is directed or his designated agent promptly after issuance, as follows:

- (1) By tendering a copy at the coal exploration or surface coal mining and reclamation

operation to the designated agent or to the individual who, based upon reasonable inquiry, appears to be in charge. If no such individual can be located at the site, a copy may be tendered to any individual at the site who appears to be an employee or agent of the person to whom the notice or order is issued. Service shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept.

(2) As an alternative to paragraph (a)(1) of this section, service may be made by sending a copy of the notice or order by certified mail or by hand to the permittee or his designated agent, or by any means consistent with the rules of the Supreme Court of Virginia governing service of a summons and complaint. Service shall be complete upon tender of the notice or order or of the certified mail and shall not be deemed incomplete because of refusal to accept.

(b) The permittee may designate, in writing to the division, the person who may accept service of any notice or order.

(c) The division may furnish copies of notices and orders to any person having an interest in the coal exploration, surface coal mining and reclamation operation, or the permit area, such as the surface and mineral owner, corporate officer of the permittee or entity conducting coal exploration, or the bonding company.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 843.14, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 15, Issue 6, eff. January 6, 1999.

4VAC25-130-843.15. Informal public hearing.

(a) A notice of violation or cessation order which requires cessation of mining, expressly or by necessary implication, shall expire within 30 days after it is served unless an informal public hearing is held or if the notice or order is terminated prior to the hearing. Expiration of a notice or order shall not affect the division's right to assess civil penalties for the violations as set forth in part 845. For purposes of this section, mining includes (1) extracting coal from the earth or coal waste piles and transporting it within or from the permit area, and (2) the processing, cleaning, concentrating, preparing or loading of coal where such operations occur at a place other than at a mine site.

(b) A person issued a notice of violation or cessation order pursuant to this part may request, in writing within 15 days from service of the notice or order, an informal public hearing to review the issuance of the notice or order. The written request must be submitted to the division's Big Stone Gap Office.

(c) The division shall conduct the informal hearing within 30 days from receipt of the hearing request pursuant to § 2.2-4019 of the Virginia Administrative Process Act. The division shall give as much advance notice as is practicable of the time, place, and subject matter of the informal

public hearing to:

(1) The person to whom the notice or order was issued; and

(2) Any person who filed a report which led to that notice or order.

(d) The division shall also post notice of the hearing at its Big Stone Gap office and, where practicable, publish it in a newspaper of general circulation in the area of the mine.

(e) An informal public hearing shall be conducted by a representative of the division, who may accept oral or written arguments and any other relevant information from any person attending.

(f) Within five days after the close of the informal public hearing, the division shall affirm, modify, or vacate the notice or order in writing. The decision shall be sent to-

(1) The person to whom the notice or order was issued; and

(2) Any person who filed a report which led to the notice or order.

(g) The granting of an informal public hearing shall not affect the right of any person to formal review under § 45.1-249 of the Act.

(h) The person conducting the hearing for the division shall determine whether or not the mine site should be viewed during the hearing. In making this determination the only consideration shall be whether a view of the mine site will assist the person conducting the hearing in reviewing the appropriateness of the enforcement action or of the required remedial action.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 843.15, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 23, Issue 13, eff. April 4, 2007.

4VAC25-130-843.16. Formal review of citations.

(a) A person issued a notice of violation or cessation order under 4VAC25-130-843.11 or 4VAC25-130-843.12, or a person having an interest which is or may be adversely affected by the issuance, modification, vacation, or termination of a notice or order may request review of that action by filing an application for formal review and request for hearing, under § 45.1-249 of the Act, within 30 days after receiving notice of the action. A person may also request formal review of the decision rendered under 4VAC25-130-843.15, if the request is submitted within 15 days of receipt of the informal public hearing decision.

(b) The filing of an application for review and request for a hearing under this section shall not operate as a stay of any notice or order, or of any modification, termination, or vacation of either.

(c) Hearings under subsection (a) of this section shall be conducted by a hearing officer appointed by the director. Within 30 days after the close of the record, the hearing officer shall issue a written decision affirming, modifying, terminating, or vacating the notice or order. The decision shall be final, subject to the review and reconsideration by the director or his designee provided

in subsection (d) of this section.

(d) Within 14 days after the issuance of a decision the permittee, or any person who participated in the hearing and who has an interest which is or may be adversely affected by the hearing officer's decision, may appeal to the director or his designee for review of the record and reconsideration of the hearing officer's decision. The director or his designee may also, on his own motion, with notice to the parties, made within 14 days of the hearing officer's decision, review the record and reconsider the hearing officer's decision. No further evidence will be allowed in connection with such review and reconsideration but the director or his designee may hear further arguments and may also, after considering the record remand any case for further hearing if he considers such action necessary to develop the facts. Within 30 days of the appeal or motion for review and reconsideration, the director or his designee shall complete his review of the hearing officer's decision and issue a final decision thereon.

(e) All requests for hearing before a hearing officer, or appeals for review and reconsideration, made under this section, and all notices of appeal for judicial review of a hearing officer's final decision, or a final decision on review and reconsideration, shall be filed with the Director, Division of Mined Land Reclamation, Department of Mines, Minerals and Energy, Post Office Drawer 900, Big Stone Gap, Virginia 24219.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 843.16, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 23, Issue 13, eff. April 4, 2007.

4VAC25-130-843.18. Inability to comply.

(a) No cessation order or notice of violation issued under this Part may be vacated because of inability to comply.

(b) Inability to comply may not be considered in determining whether a pattern of violations exists.

(c) Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of civil penalty under Part 845 and of the duration of the suspension of a permit under 4VAC25-130-843.13(c).

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 843.18, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-845.2. Objective.

Civil penalties are assessed under § 45.1-246 of the Act and this Part to deter violations and to ensure maximum compliance with the terms and purposes of the Act on the part of the coal mining industry.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 845.2, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-845.11. Assessment determination.

The division shall review each notice of violation and cessation order in accordance with the assessment procedures described in 4VAC25-130-845.12, 4VAC25-130-845.13, 4VAC25-130-845.15, and 4VAC25-130-845.16 to determine whether a civil penalty will be assessed, the amount of the penalty, and whether each day of continuing violation will be deemed a separate violation for purposes of the total penalty assessed.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 845.11, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-845.12. When a penalty will be assessed.

- (a) The division shall assess a penalty for each cessation order.
- (b) The division may assess a penalty for each notice of violation. In determining whether to assess a penalty, the division shall consider the seriousness of the violation, the permittee's previous history of violations, the degree of negligence, and the permittee's good faith in attempting to achieve rapid compliance after notification of the violation, as described in 4VAC25-130-845.13.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 845.12, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-845.13. Point system.

The division shall use the point system described in this section to determine the amount of the penalty.

(a) Seriousness. The division shall assign up to 10 points based on the seriousness of the violation in accordance with the following.

Points:

0 No actual or potential damage to the environment or threat to public health and safety.

1-2 Slight actual or potential damage to the environment and no actual or potential threat to public health and safety; also violations of administrative requirements which can be quickly corrected and which do not obstruct enforcement by the division.

3-4 Moderately significant actual or potential damage to the environment which can be corrected promptly; also actual or potential minor hazard to the public health and safety; also violations of administrative requirements which can be corrected after some delay, and which tend to hamper or obstruct enforcement by the division.

5-6 Moderately significant actual or potential damage to the environment which can be corrected only after a substantial effort or period of time; also actual or potential moderately significant hazard to the public health and safety.

7-8 Substantial actual or potential damage to the environment which can be corrected only after a substantial effort or period of time; also extremely serious potential damage to the environment; also substantial actual or potential damage to the public health and safety.

9-10 Extremely serious actual damage to the environment; also extreme actual or potential hazards to the public health and safety.

(b) Negligence.

(1) The division shall assign up to six points based on the degree of fault of the person to whom the notice or order was issued in causing or failing to correct the violation, condition, or practice which led to the notice or order, either through act or omission. Points shall be assessed as follows:

(A) A violation which occurs through no negligence shall be assigned no penalty points for negligence;

(B) A violation which is caused by negligence shall be assigned three points or less, depending on the degree of negligence;

(C) A violation which occurs through a greater degree of fault than negligence shall be assigned four to six points, depending on the degree of fault.

(2) In determining the degree of negligence, involved in a violation and the number of points to be assigned, the following definitions apply:

(A) No negligence means an inadvertent violation which was unavoidable by the exercise of reasonable care.

(B) Negligence means the failure of a permittee to prevent the occurrence of any violation of the permit or any requirement of the Act or this chapter due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the Act due to indifference, lack of diligence, or lack of reasonable care.

(C) A greater degree of fault than negligence means reckless, knowing, or intentional conduct.

(3) In calculating points to be assigned for negligence, the acts of all persons working on the coal exploration or surface coal mining and reclamation site shall be attributed to the person to whom the notice or order was issued, unless that person establishes that they were acts of deliberate sabotage.

(c) Credit for good faith in attempting to achieve compliance.

(1) The division shall deduct from the total points assigned under subsections (a) and (b) of this section points based on the demonstrated good faith of the permittee in attempting to achieve rapid compliance after notification of the violation. Points shall be deducted as follows:

(i) three to four points shall be deducted when the permittee to whom the notice or order was issued took extraordinary measures to abate the violation in the shortest possible time and that abatement was achieved before the time set for abatement.

(ii) one to two points shall be deducted when the permittee to whom the notice or order was issued took prompt and diligent efforts to promptly abate the violation and that abatement was achieved before the time set for abatement.

(2) If the consideration of this criterion is impractical because of the length of the abatement period, the calculation of points may be made without considering this criterion and may be re-calculated after the violation has been abated.

(d) Determination of base penalty.

The division shall determine the base amount of any civil penalty by converting the total number of points calculated under subsections (a), (b), and (c) of this section to a dollar amount, according to the following schedule:

Points	Dollars	Points	Dollars
1	50	9	1050

2	100	10	1350
3	175	11	1700
4	250	12	2050
5	325	13	2400
6	400	14	2750
7	475	15	3100
8	750	16	3500

(e) Credit and additional penalties for previous history.

(1) Except for a violation that resulted in personal injury or fatality to any person, the division shall reduce the base penalty determined under subsection (d) of this section by 10% if the permittee has had no violations cited by the division within the preceding 12-month period.

(2) The division shall add to the base penalty determined under subsection (d) of this section additional sums for the permittee's previous history of violations as follows:

(i) Twenty dollars for each violation contained in a notice of violation, up to 10 of such violations;

(ii) Fifty dollars for each violation contained in a notice of violation, in excess of 10 violations;

(iii) One hundred dollars for each violation contained in a cessation order.

(3) A violation shall not be counted if the notice or order is the subject of pending administrative or judicial review or if the time to request such review has not expired, and thereafter it shall be counted for only one year; provided however, that a violation which is subject to administrative or judicial review, or for which the time to request such review has not expired, shall not be disregarded for the purpose of obtaining a 10% reduction pursuant to subdivision (e)(1) of this section, unless such administrative or judicial review results in the vacation of the penalty.

(4) No violation for which the notice or order has been vacated shall be counted.

(5) Each violation shall be counted without regard to whether it led to a civil penalty assessment.

(f) The maximum penalty which the division may assess under this section for each cessation order or notice of violation shall be \$5,000, except that if the violation resulted in a personal injury or fatality to any person, then the civil penalty determined under subsection (d) of this section shall be multiplied by a factor of 20, not to exceed \$70,000. As provided in 4VAC25-130-845.15, each day of continuing violation may be deemed a separate violation for the purpose of assessing penalties.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 845.13, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 23, Issue 13, eff. April 4, 2007.

4VAC25-130-845.15. Assessment of separate violations for each day.

(a) The division may assess separately a civil penalty for each day from the date of issuance of the notice of violation or cessation order to the date set for abatement of the violation. In determining whether to make such an assessment, the division shall consider the factors listed in 4VAC25-130-845.13 and may consider the extent to which the person to whom the notice or order was issued gained any economic benefit as a result of a failure to comply. For any violation which continues for two or more days and which has been assigned a penalty of \$5,000 or more under 4VAC25-130-845.13, the division shall assess a penalty for a minimum of two separate days.

(b) In addition to the civil penalty provided for in subsection (a) of this section, whenever a violation contained in a notice of violation or cessation order has not been abated within the abatement period set in the notice or order or as subsequently extended pursuant to § 45.1-245 B of the Act, a civil penalty of not less than \$750 shall be assessed for each day during which such failure to abate continues, except that:

(1)(i) If suspension of the abatement requirements of the notice or order is ordered in a temporary relief proceeding under § 45.1-249 C of the Act, after a determination that the person to whom the notice or order was issued will suffer irreparable loss or damage from the application of the requirements, the period permitted for abatement shall not end until the date on which the director or his authorized representative issues a final order with respect to the violation in question; and

(ii) If the person to whom the notice or order was issued initiates review proceedings under § 45.1-251 B of the Act with respect to the violation, in which the obligations to abate are suspended by the court pursuant to § 45.1-251 B of the Act, the daily assessment of a penalty shall not be made for any period before entry of a final order by the court;

(2) Such penalty for the failure to abate the violation shall not be assessed for more than 30 days for each such violation. If the permittee has not abated the violation within the 30 day period, the division shall take appropriate action pursuant to §§ 45.1-245 and 45.1-246 of the Act within 30 days to ensure that abatement occurs or to ensure that there will not be a reoccurrence of the failure to abate.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 845.15, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 23, Issue 13, eff. April 4, 2007.

4VAC25-130-845.16. Waiver of use of formula to determine civil penalty.

(a) The Director or his designee, upon his own initiative or upon written request received within 15 days of issuance of a notice of violation or a cessation order, may waive the use of the formula contained in 4VAC25-130-845.13 to set the civil penalty, if he determines that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust. However, the Director or his designee shall not waive the use of the formula or reduce the proposed assessment on the basis of an argument that a reduction in the proposed penalty could be used to abate violations of the Act, this chapter, or any condition of any permit or exploration approval. The basis for every waiver shall be fully explained and documented in the records of the case.

(b) If the Director or his designee waives the use of the formula, he shall use the criteria set forth in 4VAC25-130-845.13 to determine the appropriate penalty. When the Director or his designee has elected to waive the use of the formula, he shall give a written explanation of the basis for the assessment made to the person to whom the notice or order was issued.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 845.16, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-845.17. Procedures for assessment of civil penalties.

(a) Within 15 days of service of a notice or order, the person to whom it was issued may submit written information about the violation to the division and to the inspector who issued the notice of violation or cessation order. The division shall consider any information so submitted in determining the facts surrounding the violation and the amount of the penalty.

(b) The division shall serve a copy of the proposed assessment and the computation of the proposed assessment on the person to whom the notice or order was issued, by certified mail, or by any means consistent with the Rules of the Supreme Court of Virginia governing service of a summons or complaint, within 30 days of the issuance of the notice or order.

(1) If the mail is tendered at the address of that person set forth in the sign required under 4VAC25-130-816.11 or 4VAC25-130-817.11, or at any address at which that person is in fact located, and the person refuses to accept delivery of or to collect such documents, the

requirements of this paragraph shall be deemed to have been complied with upon such tender. It is the permittee's responsibility to ensure the division has his current address.

(2) Failure by the division to serve any proposed assessment within 30 days shall not be grounds for dismissal of all or part of such assessment unless the person against whom the proposed penalty has been assessed—

(i) Proves actual prejudice as a result of the delay; and

(ii) Makes a timely objection to the delay. An objection shall be timely only if made in the normal course of administrative review.

(c) Unless a conference has been requested, the division shall review and reassess any penalty if necessary to consider facts which were not reasonably available on the date of issuance of the proposed assessment because of the length of the abatement period. The division shall serve a copy of any such reassessment in the manner provided in paragraph (b), within 30 days after the date the violation is abated.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 845.17, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 15, Issue 6, eff. January 6, 1999.

4VAC25-130-845.18. Procedures for assessment conference.

(a) The division shall arrange for a conference to review the proposed assessment or reassessment, upon written request of the person to whom notice or order was issued, if the request is received within 30 days from the date the proposed assessment or reassessment is served.

(b)(1) The division shall assign a conference officer to hold the assessment conference. The assessment conference shall be conducted as an informal proceeding in accordance with § 2.2-4019 of the Code of Virginia. The assessment conference shall be held within 60 days from the date the conference request is received or the end of the abatement period, whichever is later. Provided that a failure by the division to hold such conference within 60 days shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty has been assessed proves actual prejudice as a result of the delay.

(2) The division shall post notice of the time and place of the conference at the division's office in Big Stone Gap or field office located closest to the mine at least five days before the conference. Any person shall have a right to attend and participate in the conference.

(3) The conference officer shall consider all relevant information on the violation. Within 30 days after the conference is held, the conference officer shall either:

(i) Settle the issue, in which case a settlement agreement shall be prepared and signed by the division and by the person assessed; or

(ii) Affirm, raise, lower, or vacate the penalty.

(4) An increase or reduction of a proposed civil penalty assessment of more than 25% and more than \$500 shall not be final and binding on the division, until approved by the director or his designee.

(c) The division shall promptly serve the person assessed with a notice of the conference decision in the manner provided in 4VAC25-130-845.17 (b) and shall include a worksheet if the penalty has been raised or lowered. The reasons for the conference officer's action shall be fully documented in the file.

(d)(1) If a settlement agreement is entered into, the person assessed will be deemed to have waived all rights to further review of the violation or penalty in question, except as otherwise expressly provided for in the settlement agreement. The settlement agreement shall contain a clause to this effect.

(2) If full payment of the amount specified in the settlement agreement is not received by the division within 30 days after that date of signing, the division may enforce the agreement or rescind it and proceed according to subdivision (b)(3)(ii) of this section within 30 days from the date of the rescission.

(e) The conference officer may terminate the conference if it is determined that the issues cannot be resolved or that the person assessed is not diligently working toward resolution of the issues.

(f) At any formal review proceedings under §§ 45.1-245 C, 45.1-246 and 45.1-249 of the Act, no evidence as to statements made or evidence produced by one party at a conference shall be introduced as evidence by another party or to impeach a witness.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 845.18, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 15, Issue 6, eff. January 6, 1999; Volume 23, Issue 13, eff. April 4, 2007.

4VAC25-130-845.19. Request for hearing.

(a) The person charged with the violation may contest the proposed penalty or the fact of the violation by submitting a petition and an amount equal to the proposed penalty or, if a conference has been held, the reassessed or affirmed penalty to the division (to be held in escrow as provided in subsection (b) of this section) within 30 days from receipt of the proposed assessment or reassessment or 30 days from the date of service of the assessment conference decision, whichever is later. The fact of the violation may not be contested if it has been decided in a review proceeding commenced under 4VAC25-130-843.16.

(b) The division shall transfer all funds submitted under subsection (a) of this section to the State Treasurer's Office which shall hold them in escrow pending completion of the administrative and judicial review process, at which time it shall disburse them as provided in 4VAC25-130-845.20.

(c) The hearing requested pursuant to a petition filed under subsection (a) of this section shall be conducted as a formal hearing in accordance with the provisions of § 2.2-4020 of the Code of Virginia. The hearing officer shall cause an accurate verbatim record of the hearing to be made. The division may charge the reasonable cost of preparing such record to any party to the hearing who requests a copy of the record.

(d) All requests for hearing, or appeals for review and reconsideration made under this section; and all notices of appeal for judicial review of a hearing officer's final decision, or the final decision on review and reconsideration shall be filed with the Director, Division of Mined Land Reclamation, Department of Mines, Minerals and Energy, Post Office Drawer 900, Big Stone Gap, Virginia 24219.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 845.19, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 15, Issue 6, eff. January 6, 1999; Volume 23, Issue 13, eff. April 4, 2007.

4VAC25-130-845.20. Final assessment and payment of penalty.

(a) If the person to whom a notice of violation or cessation order is issued fails to request a hearing as provided in 4VAC25-130-845.19, the proposed assessment shall become a final order of the Director and the penalty assessed shall become due and payable upon expiration of the time allowed to request a hearing.

(b) If any party requests judicial review of a final order of the Director, the proposed penalty shall continue to be held in escrow until completion of the review. Otherwise, subject to Paragraph (c) of this section, the escrowed funds shall be transferred to the State Treasurer's Office in payment of the penalty, and the escrow shall end.

(c) If the final decision in the administrative and judicial review results in an order reducing or eliminating the proposed penalty assessed under this Part, the division shall within 30 days of receipt of the order refund to the person assessed all or part of the escrowed amount, with accrued interest from the date of payment into escrow to the date of the refund.

(d) If the review results in an order increasing the penalty, the person to whom the notice or order was issued shall pay the difference to the division within 15 days after the order is mailed to such person.

(e) Failure to submit the penalty amount to the division shall result in the issuance of a show cause order pursuant to 4VAC25-130-843.13.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 845.20, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-846.2. (Repealed.)

Historical Notes

Derived from VR480-03-19 § 846.2, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; repealed, Virginia Register Volume 29, Issue 13, eff. March 27, 2013.

Part 846

Individual Civil Penalties

4VAC25-130-846.12. When an individual civil penalty may be assessed.

(a) Except as provided in Paragraph (b) of this section, the division may assess an individual civil penalty against any corporate director, officer or agent of a corporate permittee who knowingly and willfully authorized, ordered or carried out a violation, failure, or refusal.

(b) The division shall not assess an individual civil penalty in situations resulting from a permit violation by a corporate permittee until a cessation order has been issued by the division to the corporate permittee for the violation, and the cessation order has remained unabated for 30 days.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 846.12, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-846.14. Amount of the individual civil penalty.

(a) In determining the amount of an individual civil penalty, the division shall consider the criteria specified in § 45.1-246 A of the Act, including:

- (1) The individual's history of authorizing, ordering or carrying out previous violations, failures or refusals at the particular surface coal mining operation;
- (2) The seriousness of the violation, failure or refusal (as indicated by the extent of damage and/or the cost of reclamation), including any irreparable harm to the environment and any hazard to the health or safety of the public; and,
- (3) The demonstrated good faith of the individual charged in attempting to achieve rapid

compliance after notice of the violation, failure or refusal.

(b) The penalty shall not exceed \$5,000 for each violation, except that if the violation resulted in a personal injury or fatality to any person, then the civil penalty determined under 4VAC25-130-845.13 (d) shall be multiplied by a factor of 20, not to exceed \$70,000. Each day of a continuing violation may be deemed a separate violation and the division may assess a separate individual civil penalty for each day the violation, failure or refusal continues, from the date of service of the underlying notice of violation, cessation order or other order incorporated in a final decision issued by the director, until abatement or compliance is achieved.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 846.14, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 23, Issue 13, eff. April 4, 2007.

4VAC25-130-846.17. Assessment of an individual civil penalty.

(a) Notice. The division shall serve, by certified mail, each individual to be assessed a penalty under this Part a notice of proposed individual civil penalty assessment, including a narrative explanation of the reasons for the penalty, the amount to be assessed, and a copy of any underlying notice of violation and cessation order.

(b) Final order and opportunity for review. The notice of proposed individual civil penalty assessment shall become a final order of the director 30 days after service upon the individual, unless:

- (1) The individual submits a written request for formal review of the penalty to the division within 30 days of service of the notice of proposed individual civil penalty assessment; or
- (2) The division and the individual or responsible corporate permittee agree within 30 days of service of the notice of proposed individual civil penalty to a schedule or plan for the abatement or correction of the violation, failure or refusal.

(c) Service. For purposes of this section, service shall be performed on the individual to be assessed an individual civil penalty, by certified mail, or by any alternative means consistent with the Rules of the Supreme Court of Virginia governing service of a summons and complaint. Service shall be complete upon tender of the notice of proposed assessment and included information or of the certified mail and shall not be deemed incomplete because of refusal to accept.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 846.17, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982;

December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994; Virginia Register Volume 15, Issue 6, eff. January 6, 1999.

4VAC25-130-846.18. Penalty payment.

(a) If a notice of proposed individual civil penalty assessment becomes a final order in the absence of a request for formal review or an abatement agreement, the penalty shall be due upon issuance of the final order.

(b) If an individual named in the notice of proposed individual civil penalty assessment timely requests formal review under 4VAC25-130-846.17(b)(1), the penalty shall be due upon issuance of the final administrative order affirming, increasing or decreasing the proposed penalty.

(c) Abatement agreement. Where the division and corporate permittee or individual have agreed in writing on a plan for the abatement of or compliance with the unabated order, the individual named in the notice may postpone payment of the penalty until receiving either:

- (1) A final order from the division stating that the penalty is due (whereupon, payment must be submitted within 30 days); or,
- (2) A written notice from the division stating that abatement or compliance has been satisfactorily accomplished and the penalty has been withdrawn.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 846.18, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

Part 850

Training, Examination, and Certification of Blasters

4VAC25-130-850.1. Scope.

This Part establishes the procedures for training, examination and certification of persons engaged in or directly responsible for the use of explosives in surface coal mining operations (as defined in 4VAC25-130-700.5).

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 850.1, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-850.5. Definition.

As used in this Part, "Blaster" means a person directly responsible for the use of explosives in surface coal mining operations who is certified under this Part.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 850.5, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-850.12. Effective date.

Not later than 12 months following the approval by the Secretary of this Subchapter, all blasting operations shall be conducted under the direction of a certified blaster. Before that time, all such blasting operations shall be conducted by competent, experienced persons who understand the hazards involved, and who are certified by the Division of Mines (DM).

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 850.12, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-850.13. Training.

(a) Persons seeking to become certified as blasters may receive training by contacting the DM office in Big Stone Gap. The training includes, but is not limited to, the technical aspects of blasting operations and State and Federal laws governing the storage, transportation, and use of explosives; and

(b) Persons who are not certified and who are assigned to a blasting crew or assist in the use of explosives shall receive direction and on-the-job training from a blaster.

(c) The DM course shall provide training and discuss practical applications of:

(1) Explosives, including:

(i) Selection of the type of explosive to be used;

(ii) Determination of the properties of explosives which will produce desired results at an acceptable level of risk; and

- (iii) Handling, transportation, and storage;
- (2) Blast designs, including:
 - (i) Geologic and topographic considerations;
 - (ii) Design of a blast hole, with critical dimensions;
 - (iii) Pattern design, field layout, and timing of blast holes; and
 - (iv) Field applications;
- (3) Loading blast holes, including priming and boosting;
- (4) Initiation systems and blasting machines;
- (5) Blasting vibrations, airblasts and flyrock, including:
 - (i) Monitoring techniques, and
 - (ii) Methods to control adverse affects;
- (6) Secondary blasting applications;
- (7) Current Federal and State rules applicable to the use of explosives;
- (8) Blast records;
- (9) Schedules;
- (10) Preblasting surveys, including:
 - (i) Availability,
 - (ii) Coverage, and
 - (iii) Use of in-blast designs;
- (11) Blast plan requirements;
- (12) Certification and training;
- (13) Signs, warning signals, and site control;
- (14) Unpredictable hazards, including:
 - (i) Lightning,
 - (ii) Stray currents,
 - (iii) Radio waves, and
 - (iv) Misfires.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 850.13, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-850.14. Examination.

(a) The division shall insure that candidates for blaster certification are examined by reviewing and verifying:

- (1) The person has passed the DM written examination covering blasting practices, transportation and storage of explosives, DM rules and regulations, and blast controls; and
- (2) The person has also passed the division's Blaster's Coal Surface Mining Endorsement Test covering Part 850, 4VAC25-130-816.61 through 4VAC25-130-816.68 and 4VAC25-130-817.61 through 4VAC25-130-817.68; and
- (3) The person must file an application and furnish proof of experience to the DM's Board of Mine Examiners. The minimum experience shall be at least one year of practical blasting field experience.

(b) Applicants for blasters certification shall be examined, by both the division and DM at a minimum, in the topics set forth in 4VAC25-130-850.13(c).

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 850.14, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-850.15. Certification.

(a) The division shall issue the blaster's coal surface mining endorsement for a period of five years to those candidates examined and found to be competent and has met the requirements as described in 4VAC25-130-850.13 and 4VAC25-130-850.14.

(b) Suspension and revocation:

- (1) The division, when practicable, following written notice and opportunity for a hearing may, and upon a finding of willful conduct by the DM Board of Mine Examiners, shall suspend or revoke the blaster's coal surface mining endorsement certification during the term of the certification or take other necessary action for any of the following reasons:
 - (i) Non-compliance with any blasting related order issued by the division or DM;
 - (ii) Unlawful use in the work place of, or current addiction to, alcohol, narcotics, or other dangerous drugs;

(iii) Violation of any provision of the State or Federal explosives laws or regulations;

(iv) Providing false information or a misrepresentation to obtain certification.

(2) If advance notice and opportunity for a hearing cannot be provided, an opportunity for a hearing shall be provided as soon as practical following the suspension, revocation, or other adverse action.

(c) Recertification. Any person certified as a blaster must be recertified every five years by:

(1) Presenting written proof that the individual has worked in a capacity which demonstrates the blaster's competency during two of the last three years immediately preceding the expiration date; or

(2) Retaking the division's endorsement exam and achieving the required score on the exam. Anyone who fails to achieve the required score on the exam must take or retake the training prior to retaking both the division's and DM's exam.

(d) Protection of certification. Certified blasters shall take every reasonable precaution to protect their certificates from loss, theft, or unauthorized duplication. Any such occurrence shall be reported immediately to the division.

(e) Conditions:

(1) A blaster shall immediately exhibit upon request his or her certificate to any authorized representative of the division, DM, or the Office of Surface Mining.

(2) Blaster's certification shall not be assigned or transferred.

(3) Blasters shall not delegate their responsibility to any individual who is not a certified blaster.

(f) Petitions for recertification.

An individual whose certification has been revoked may petition the DMLR for recertification. The DMLR shall not accept a petition for recertification any sooner than one year from the effective date of revocation. Such petitions shall show valid reasons why the division should consider the request for recertification. The division may require retesting prior to recertification.

(g) Appeals procedures.

Appeals for review of certification including suspension and revocation decisions shall be made to the DMLR. Appeals not resolved by the DMLR may be heard pursuant to the provisions for administrative and judicial review under Chapter 19 (§ 45.1-2.26 et seq.) of Title 45.1 of the Code of Virginia.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 850.15, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982;

December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

Part 874

General Reclamation Requirements

4VAC25-130-874.12. Eligible coal lands and water.

Coal lands and water are eligible for reclamation activities if-

- (a) They were mined for coal or affected by coal mining processes;
- (b) They were mined prior to August 3, 1977, and left or abandoned in either an unreclaimed or inadequately reclaimed condition; and
- (c) There is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under statutes of the Commonwealth or Federal government, or as a result of bond forfeiture. Bond forfeiture will render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation. In cases where the forfeited bond is insufficient to pay the total cost of reclamation, additional moneys from the Fund may be sought under 30 CFR 886.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 874.12, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-874.13. Reclamation objectives and priorities.

Reclamation projects shall reflect the priorities set out in section 403 of the Federal Act (30 USC § 1233) and should be accomplished in accordance with the OSM's "Final Guidelines for Reclamation Programs and Projects" (45 CFR 14810-14819, March 6, 1980).

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 874.13, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

Part 877

Rights of Entry

4VAC25-130-877.11. Written consent for entry.

Written consent from the owner of record and lessee, or their authorized agents, is the preferred means for obtaining agreements to enter lands in order to carry out reclamation activities. Nonconsensual entry by exercise of the police power will be undertaken only after reasonable efforts have been made to obtain written consent.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 877.11, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-877.13. Entry and consent to reclaim.

(a) The Director or his authorized agents, or contractors may enter upon land to perform reclamation activities or conduct studies or exploratory work to determine the existence of the adverse effects of past coal mining if consent from the owner is obtained.

(b) If consent is not obtained, then, prior to entry under this section, the Director shall find in writing, with supporting reasons that-

- (1) Land or water resources have been or may be adversely affected by past coal mining practices;
- (2) The adverse effects are at a state where, in the interest of the public health, safety, or the general welfare, action to restore, reclaim, abate, control, or prevent should be taken; and
- (3) The owner of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices is not known or readily available, or the owner will not give permission for the Director or his authorized agents, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the effects of past coal mining practices.

(c) If consent is not obtained, the Director shall give notice of his intent to enter for purposes of conducting reclamation at least 30 days before entry upon the property. The notice shall be in writing and shall be mailed, return receipt requested, to the owner, if known, with a copy of the findings required by this section. If the owner is not known, or if the current mailing address of the owner is not known, notice shall be posted in one or more places on the property to be entered where it is readily visible to the public and advertised once in a newspaper of general circulation in the locality in which the land is located. The notice posted on the property and advertised in the newspaper shall include a statement of where the findings required by this section may be inspected or obtained.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 877.13, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982;

December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-877.14. Entry for emergency reclamation.

(a) The Director may enter into agreements with the Secretary of the Interior for the emergency restoration, reclamation, abatement, control or prevention of the adverse effects of past coal mining practices. The Director, his authorized agents, or contractors shall have the right to enter upon any land where an emergency exists and on any other land to have access to the land where the emergency exists to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices and to do all things necessary to protect the public health, safety, or general welfare.

(b) Prior to entry under this section, the Director shall make a written finding with supporting reasons that the situation qualifies as an emergency in accordance with the requirements set out in Section 410 of the Federal Act.

(c) Notice to the owner shall not be required prior to entry for emergency reclamation. The Director shall make reasonable efforts to notify the owner and obtain consent prior to entry, consistent with the emergency conditions that exist. Written notice shall be given to the owner as soon after entry as practical in accordance with the requirements of 4VAC25-130-877.13(c).

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 877.14, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

Part 879

Acquisition, Management, and Disposition of Lands and Water

4VAC25-130-879.11. Land eligible for acquisition.

(a) Land adversely affected by past coal mining practices may be acquired by the Director with moneys from the Fund if approved in advance by the OSM. The Director shall find in writing that acquisition is necessary for successful reclamation and that-

(1) The acquired land will serve recreation, historic, conservation, and reclamation purposes or provide open space benefits after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices; and

(2) Permanent facilities will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

(b)(1) Coal refuse disposal sites and all coal refuse thereon may be acquired with moneys from the Fund by the Director if approved in advance by the OSM. Prior to the approval of the acquisition of such sites, the Director shall find in writing that the acquisition of such land is necessary for successful reclamation and will serve the purposes of the Abandoned Mine Land

Reclamation Program.

- (2) Where an emergency situation exists and a written finding as set out in 4VAC25-130-877.14 has been made, the Director may use Fund moneys to acquire lands where public ownership is necessary to meet an emergency situation and prevent recurrence of the adverse effects of past coal mining practices.
- (c) Land adversely affected by past coal mining practices may be acquired by the Director if the acquisition with moneys from the Fund is an integral and necessary element of an economically feasible plan or project to construct or rehabilitate housing which meets the specific requirements set out in section 407(h) of the Federal Act.
- (d) Land or interests in land needed to fill voids, seal abandoned tunnels, shafts, and entryways or reclaim surface impacts of underground or surface mines may be acquired by the Director if he determines that acquisition is necessary under 4VAC25-130-874.12(a), (b), and (c).
- (e) The Director shall acquire only such interests in the land as are necessary for the reclamation work planned or the postreclamation use of the land. Interests in improvements on the land, mineral rights, or associated water rights may be acquired if-
 - (1) The customary practices and laws of the Commonwealth will not allow severance of such interests from the surface estate; or
 - (2) Such interests are necessary for the reclamation work planned or for the postreclamation use of the land; and
 - (3) Adequate written assurances cannot be obtained from the owner of the severed interest that future use will not be in conflict with the reclamation to be accomplished.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 879.11, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-879.12. Procedures for acquisition.

- (a) An appraisal of all land or interest in land to be acquired shall be obtained by the Director. The appraisal shall state the fair market value of the land as adversely affected by past mining.
- (b) When practical, acquisition shall be by purchase from a willing seller. The amount paid for land or interests in land acquired shall reflect the fair market value of the land or interests in land as adversely affected by past mining.
- (c) When necessary, land or interests in land may be acquired by condemnation. Condemnation procedures shall not be started until all reasonable efforts have been made to purchase the land or interests in lands from a willing seller.
- (d) The Director shall comply, at a minimum, with the Uniform Relocation Assistance and Real

Property Acquisition Policies Act of 1972, Chapter 6 (§ 25-235 et seq.) of Title 25 of the Code of Virginia.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 879.12, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-879.13. Acceptance of gifts of land.

(a) The Director may accept donations of title to land or interests in land if the land proposed for donation meets the requirements set out in 4VAC25-130-879.11.

(b) Offers to make a gift of land or interest in land to the Commonwealth shall be in writing and comply with the laws and regulations of the Commonwealth for land donations.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 879.13, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-879.14. Management of acquired land.

Land acquired under this Part may be used for any lawful purpose that is consistent with the necessary reclamation activities. Procedures for collection of user charges or the waiver of such charges by the Director shall provide that all user fees collected shall be deposited in the Fund.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 879.14, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-879.15. Disposition of reclaimed land.

(a) Prior to the disposition of any land acquired under this Part, the Director shall publish a notice of proposed land disposition, hold public hearings, if requested, and make written findings in accordance with the authority contained in Section 407(g)(2) of the Federal Act.

(b) The Director may transfer, with the approval of the OSM, administrative responsibility for land acquired to any agency or political subdivision of the Commonwealth or Federal department or agency with or without cost to that entity. The agreement under which a transfer is made shall specify-

(1) The purposes for which the land may be used, which shall be consistent with the authorization under which the land was acquired; and

(2) That the title of administrative responsibility for the land shall revert to the Director if, at any time in the future, the Director finds that the land is not used for the purposes specified.

(c) The Director, may with approval by the OSM, transfer title to abandoned and unreclaimed land to the United States, to be reclaimed and administered by the OSM. The Director may purchase such land from the OSM after reclamation is completed. The price to be paid shall be the fair market value of the land in its reclaimed condition less any portion of the land acquisition price paid by the Commonwealth.

(d) The Director may sell land acquired and reclaimed under this Part, except that acquired for housing under 4VAC25-130-879.11(c), to local government at less than fair market value but in no case less than purchase price plus reclamation cost provided such land is used for a valid public purpose.

(e) The Director may transfer or sell land acquired for housing under 4VAC25-130-879.11(c), with or without monetary consideration, to any political subdivision of the Commonwealth, or to any firm, association, or corporation. The conditions of transfer or sale shall be in accordance with section 407(h) of the Federal Act.

(f) The Director, with the approval of the OSM, may transfer title for land acquired for housing under 4VAC25-130-879.11(c) under such terms and conditions as required to--

(1) A department, agency, or instrumentality of the Commonwealth; or

(2) Any public body or nonprofit organization designated by the Commonwealth.

(g)(1) The Director may sell the land acquired under this Part by public sale if-

(i) Such land is suitable for industrial, commercial, residential, or recreational development;

(ii) Such development is consistent with local, State, or Federal land use plans for the area in which the land is located; and

(iii) Retention by the Director or disposal under other Paragraphs of this section is not in the public interest.

(2) Disposal procedures will be in accordance with Section 407(g) of the Federal Act and applicable requirements of the Commonwealth.

(3) The Commonwealth may transfer title or administrative responsibility for land to cities, municipalities, or quasi-governmental bodies, provided that the Commonwealth provide for the reverter of the title or administrative responsibility if the land is no longer used for the purposes originally proposed.

(h) All moneys received from disposal of land under this Part shall be deposited in the Fund.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 879.15, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

Part 882

Reclamation on Private Land

4VAC25-130-882.12. Appraisals.

(a) A notarized appraisal of private land to be reclaimed which may be subject to a lien under 4VAC25-130-882.13 shall be obtained from an independent appraiser. The appraisal shall state-

- (1) The estimated fair market value of the property in its unreclaimed condition; and
- (2) The estimated fair market value of the property as reclaimed.

(b) This appraisal shall be made prior to start of reclamation activities. The division shall furnish to the appraiser information of sufficient detail in the form of plans, factual data, specifications, etc., to make such appraisals. When reclamation requires more than six months to complete, an updated appraisal under Paragraph (a)(2) of this section shall be made to determine if the increase in value as originally appraised has actually occurred. Such updated appraisal shall not include any increase in value of the land as unreclaimed. If the updated appraised value results in lower increase in value, such increase shall be used as a basis for the lien. However, an increase in value resulting from the updated appraisal shall not be considered in determining a lien. The Commonwealth shall provide appraisal standards for projects consistent with generally acceptable appraisal practice.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 882.12, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-882.13. Liens.

(a) The Director has the discretionary authority to place or waive a lien against land reclaimed if

the reclamation results in a significant increase in the fair market value; except that-

(1) A lien shall not be placed against the property of a surface owner who acquired title prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operation which necessitated the reclamation work.

(2) The basis for making a determination of what constitutes a significant increase in market value or what factual situation constitutes a waiver of lien will be made by the Director pursuant to the Congressional intent expressed in Section 408 of the Federal Act and consistent with the laws of the Commonwealth governing liens.

(3) A lien may be waived if findings made prior to construction indicate that the reclamation work to be performed on private land shall primarily benefit the health, safety, or environmental values of the greater community or area in which the land is located; or if the reclamation is necessitated by an unforeseen occurrence, and the work performed to restore that land will not result in a significant increase in the market value of the land as it existed immediately before the unforeseen occurrence; and

(4) The Director may waive the lien if the cost of filing it, including indirect costs to the Commonwealth, exceeds the increase in fair market value as a result of reclamation activities.

(b) If a lien is to be filed, the Director shall, within six months after the completion of the reclamation work, file a statement in the office having responsibility under applicable law for recording judgments and placing liens against land. Such statement shall consist of notarized copies of the appraisals obtained under 4VAC25-130-882.12 and may include an account of moneys expended for the reclamation work. The amount reported to be the increase in value of the property shall constitute the lien to be recorded in compliance with laws of the Commonwealth; Provided, however, That prior to the time of actual filing of the proposed lien, the landowner shall be notified of the amount of the proposed lien and shall be allowed a reasonable time to prepay that amount instead of allowing the lien to be filed against the property involved.

(c) Within 60 days after the lien is filed the landowner may petition under local law to determine the increase in market value of the land as a result of reclamation work. Any aggrieved party may appeal in the manner provided by section 45.1-268 of the Code of Virginia.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 882.13, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

4VAC25-130-882.14. Satisfaction of liens.

(a) A lien placed on private property shall be satisfied, to the extent of the value of the consideration received, at the time of transfer of ownership. Any unsatisfied portion shall remain

as a lien on the property.

(b) The Director, when a lien is filed on private property, shall maintain or renew it from time to time as may be required under laws of the Commonwealth or local law.

(c) Moneys derived from the satisfaction of liens established under this Part shall be deposited in the Fund.

Statutory Authority

§§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Historical Notes

Derived from VR480-03-19 § 882.14, eff. December 15, 1981; amended, eff. June 28, 1982; October 28, 1982; December 14, 1982; October 11, 1983; December 27, 1983; May 8, 1984; June 22, 1984; August 2, 1984; October 16, 1985; January 7, 1987; July 22, 1987; November 25, 1987; October 12, 1988; December 26, 1990; July 1, 1991; July 17, 1991; November 20, 1991; July 7, 1992; May 5, 1993; October 19, 1994.

Forms (4VAC25-130)

Ground Water Monitoring Report, DMLR-PT-101 (rev. 11/99).

Application for Exemption Determination (Extraction of Coal Incidental to the Extraction of Other Minerals), DMLR-211 (rev. 3/09).

[Consent for Right of Entry-Exploratory, DMLR-AML-122 \(rev. 3/10\).](#)

[Consent for Right of Entry-Construction, DMLR-AML-123 \(rev. 3/10\).](#)

[Final Inspection – Abandoned Mine Lands – DMLR-AML-171 \(rev. 2/07\).](#)

License for Performance-Acid Mine Drainage Investigations and Monitoring (Abandoned Mine Land Program), DMLR-AML-175c (11/96).

License for Performance-Acid Mine Drainage Reclamation and Construction (Abandoned Mine Land Program), DMLR-AML-176c (rev. 12/96).

Consent for Right of Entry-Ingress/Egress, DMLR-AML-177 (rev. 3/98).

[Public Notice of Intent to Enter to Conduct Reclamation Activities, DMLR-AML-301 \(rev. 3/10\).](#)

[Landowner Contact – Abandoned Mine Land Program, DMLR-AML-302 \(rev. 3/10\).](#)

[Lien Waiver –Real Estate Appraisal – Abandoned Mine Land Program, DMLR-AML-305 \(rev. 3/10\).](#)

[Estates to be Appraised – Abandoned Mine Land Program, DMLR-AML-309 \(rev. 3/10\).](#)

[Lien Waiver – Realty Analysis – Abandoned Mine Land Program, DMLR-AML-311 \(rev. 3/10\).](#)

Application for Recertification: DMLR Endorsement/Blaster's Certification, DMLR-BCME-03 (rev. 3/09).

Application for DMLR Endorsement: Blaster's Certification (Coal Surface Mining Operation), DMLR-BCME-04 (rev. 3/09).

Geology and Hydrology Information Part A through E, DMLR-CP-186 (rev. 3/86).

Notice of Temporary Cessation, DMLR-ENF-220 (rev. 3/09).

Lands Unsuitable Petition, DMLR-OA-131 (rev. 12/85).

Chapter 19-Statement for Third Party-Certificate of Deposit, DMLR-PS-093 (rev. 12/85).

Application for Performance Bond Release, DMLR-PT-212 (rev. 3/09)

Example-Waiver (300 Feet from Dwelling), DMLR-PT-223 (rev. 2/96).

Analysis, Premining vs Postmining Productivity Comparison (Hayland/Pasture Land Use), DMLR-PT-012 (rev. 3/09).

Surety Bond, DMLR-PT-013 (rev. 8/07).

Surety Bond-Federal Lands, DMLR-PT-013A (rev. 3/09).

Surety Bond Rider, DMLR-PT-013B (rev. 8/07).

Map Legend, DMLR-PT-017 (rev. 3/09).

Certificate of Deposit, DMLR-PT-026 (rev. 8/07).

Form Letter From Banks Issuing a CD as Performance Bond for Mining on Federal Lands, DMLR-PT-026A (rev. 8/07).

Operator's Seeding Report, DMLR-PT-011 (rev. 3/09).

Request for Relinquishment, DMLR-PT-027 (rev. 6/09).

Water Supply Inventory List, DMLR-PT-030 (rev. 3/09).

Application for Permit for Coal Surface Mining and Reclamation Operations and National Pollutant Discharge Elimination System (NPDES), DMLR-PT-034 (rev. 2/99).

[Request for DMLR Permit Data, DMLR-PT-034info \(rev. 3/10\).](#)

Certification - Application for Permit: Coal Surface Mining and Reclamation Operations, DMLR-PT-034D (rev. 3/09).

Well Construction Data Sheet, DMLR-WCD-034D (rev. 5/04).

Sediment Basin Design Data Sheet, DMLR-PT-086 (rev. 3/09).

Ground Water Monitoring Report, DMLR-PT-101 (rev. 3/09).

Pre-Blast Survey, DMLR-PT-104 (rev. 3/09).

Stage-Area Storage Computations, DMLR-PT-111 (rev. 3/09).

Discharge Monitoring Report, DMLR-PT-119 (rev. 3/09).

Water Monitoring Report-Electronic File/Printout Certification, DMLR-PT-119C (rev. 3/09).

Coal Surface Mining Reclamation Fund Application, DMLR-PT-162 (rev. 3/09).

Conditions-Coal Surface Mining Reclamation Fund, DMLR-PT-167 (rev. 3/09).

Coal Surface Mining Reclamation Fund Tax Reporting Form, DMLR-PT-178 (rev. 3/09).

Surface Water Monitoring Report, DMLR-PT-210 (rev. 3/09).

Application For Performance Bond Release, DMLR-PT-212 (rev. 3/09).

Public Notice: Application for Transfer, Assignment, or Sale of Permit Rights under Chapter 19 of Title 45.1 of the Code of Virginia, DMLR-PT-219 (rev. 3/09).

Public Notice: Application for Bond Reduction Under Chapter 19 of Title 45.1 of the Code of Virginia, Phase I, DMLR-PT-225 (rev. 3/09).

Public Notice: Application for Bond Reduction Under Chapter 19 of Title 45.1 of the Code of Virginia, Phase II, DMLR-PT-226 (rev. 3/09).

Public Notice: Application for Bond Reduction Under Chapter 19 of Title 45.1 of the Code of Virginia, Phase III, DMLR-PT-227 (rev. 3/09).

Public Notice: Application for Bond Reduction Under Chapter 19 of Title 45.1 of the Code of Virginia, Incremental Bond Reduction, DMLR-PT-228 (rev. 8/09).

Verification of Public Display of Application, DMLR-PT-236 (8/01).

Affidavit (Permit Application Information: Ownership and Control Information and Violation History Information), DMLR-PT-240 (rev. 3/09).

Stream Channel Diversion(s) Certification, DMLR-PT-233 (rev. 3/09).

Affidavit (No Legal Change in a Company's Identity), DMLR-PT-250 (rev. 3/09).

Affidavit (Reclamation Fee Payment), DMLR-PT-244 (rev. 3/09).

Application-National Pollutant Discharge Elimination System (NPDES) Permit-Short Form C, DMLR-PT-128 (rev. 3/09).

National Pollutant Discharge Elimination System (NPDES) Application Instructions, DMLR-PT-128A (rev. 3/09).

Surface Water Baseline Data Summary, DMLR-TS-114 (rev. 4/82).

Diversion Design Computation Sheet, DMLR-TS-120 (rev. 12/85).

Sediment Channel Design Data Sheet, DMLR-TS-127 (rev. 12/85).

Virginia Stream Survey, DMLR-TS-217 (rev. 1/87).

Line Transect-Forest Land Count, DMLR-PT-224 (rev. 3/09).

Applicant Violator System (AVS) Ownership & Control Information, DMLR-AML-003 (rev. 4/97).

Application for Coal Exploration Permit and National Pollutant Discharge Elimination System Permit, DMLR-PT-062 (formerly DMLR-PS-062) (rev. 3/09).

Application-National Pollutant Discharge Elimination System Application Instructions, DMLR-PT-128 (rev. 9/97).

Written Findings, DMLR-PT-237 (rev. 1/98).

[Irrevocable Standby Letter of Credit, DMLR-PT-255 \(rev. 10/11\).](#)

Confirmation of Irrevocable Standby Letter of Credit, DMLR-PT-255A (eff. 8/03).

Affidavit DMLR-AML-312 (eff. 7/98).

Indemnity Agreement - Self Bond, DMLR-PT-221 (eff. 12/07).

Permittee Consent to Service by Electronic Mail, DMLR-PT-265 (rev. 3/09).

Documents Incorporated by Reference (4VAC25-130)

Standard Methods for the Examination of Water and Wastewater, 17th Edition, 1989, American Public Health Association.

Uniform Customs and Practices for Documentary Credits, 1993 Revision (Publication No. 500), effective January 1, 1994, International Chamber of Commerce.