

VIRGINIA DEPARTMENT OF ENERGY

MINED LAND REPURPOSING

GUIDANCE MEMORANDUM¹ No. 38-15

Issue Date: March 3, 2015

Subject: Bonding of Mitigation Areas

This Guidance Memorandum addresses the exclusion of some mitigation areas from the reclamation liabilities covered under the performance bond required by §4VAC25-130-800.11(a) and 4VAC25-130-800 or 4VAC25-130-801 of the Virginia Coal Surface Mining Reclamation Regulations (VCSMRR).

Areas determined to be included in the permit solely to satisfy the mitigation requirements of another agency, such as the U.S. Army Corps of Engineers (Corps) or Virginia Department of Environmental Quality (DEQ), will not be considered part of the reclamation liabilities associated with the permit under 4VAC25-130-800.14(b).

As these mitigation areas (either previously approved or proposed) will not be considered part of the coal surface mining² and reclamation liabilities under 4VAC25-130-800.14, they should not be included in cost estimates prepared for cost-bonded (4VAC25-130-800) permits, bonds under 4VAC25-130-801, or temporary cessation requests (4VAC25-130-816.131 or 4VAC25-130-817.131) or cost estimates required as part of a requested bond reduction (4VAC25-130-800.40). Permittees will be required to provide documentation that the VCSMRR bond is not identified as the source of financial assurance for mitigation required under the Corps or DEQ permit.

Examples of mitigation areas that are excluded from the coal surface mining and reclamation liabilities include, but should not be limited to:

- Off-site mitigation – Areas where mitigation is being performed outside of the mining / sediment-drainage control area that is not considered necessary to satisfy the reclamation requirements.
- Areas not needed for surface coal mining operations – This could include mitigation required for lengths of stream channel between the mining area and sediment control that are under permit, but mitigation is not required by VCSMRR.

For the purposes of documenting mitigation completed for bond release, the permittee should depict the mitigation areas that are included in the VCSMRR bonding liabilities (e.g. a sediment pond converted to a wetland or a stream channel restored through a pond) on a map that is acceptable to the MLR technical reviewer (Post-Mining Land Use Map, etc.).

¹ This Memorandum is to be considered a guideline issued under the authority of § 45.1-230.A1 of the Code of Virginia which reads:

In addition to the adoption of regulations under this chapter, the Director may at his discretion issue or distribute to the public interpretative, advisory or procedural bulletins or guidelines pertaining to permit applications or to matters reasonably related thereto without following any of the procedures set forth in the Administrative Process Act (§ 2.2-4000 et seq.). The materials shall be clearly designated as to their nature, shall be solely for purposes of public information and education, and shall not have the force of regulations under this chapter or under any other provision of this Code.

² As defined under the Virginia Coal Surface Mining Control and Reclamation Act (VCSMCRA) and the Federal Surface Mining Control and Reclamation Act.