

MARYLAND REGISTER

## Proposed Action on Regulations

<b>Transmittal Sheet</b>  <b>PROPOSED OR REPROPOSED</b>  <b>Actions on Regulations</b>	<b>Date Filed with AELR Committee</b>	<b>TO BE COMPLETED BY DSD</b>
	03/06/2020	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 4/10/2020

2. COMAR Codification

Title	Subtitle	Chapter	Regulation
27	01	01	01
27	01	02	05
27	01	07	01, .02, .03
27	02	01	01
27	02	05	08

3. Name of Promulgating Authority

Critical Area Commission for Chesapeake and Atlantic Coastal Bays

<b>4. Name of Regulations Coordinator</b>	<b>Telephone Number</b>
Lisa A Hoerger	410-260-3478

**Mailing Address**

1804 West Street, Suite 100

<b>City</b>	<b>State</b>	<b>Zip Code</b>
Annapolis	MD	21401

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[lisa.hoerger@maryland.gov](mailto:lisa.hoerger@maryland.gov)

<b>5. Name of Person to Call About this Document</b>	<b>Telephone No.</b>
Lisa Hoerger	410-260-3478

**Email Address**

lisa.hoerger@maryland.gov

**6. Check applicable items:**

New Regulations

Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: February 29, 2020.

Repeal of Existing Regulations

Recodification

Incorporation by Reference of Documents Requiring DSD Approval

Reproposal of Substantively Different Text:

: Md. R

(vol.) (issue) (page nos) (date)

Under Maryland Register docket no.: --P.

**7. Is there emergency text which is identical to this proposal:**

Yes  No

**8. Incorporation by Reference**

Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

**9. Public Body - Open Meeting**

OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to General Provisions Article, §3-302(c), Annotated Code of Maryland.

OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

**10. Children's Environmental Health and Protection**

Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

**11. Certificate of Authorized Officer**

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Emily Vainieri, Assistant Attorney General, (telephone #410-260-8352) on March 6, 2020. A written copy of the approval is on file at this agency.

**Name of Authorized Officer**

Charles C. Deegan

**Title**

Chairman

**Telephone No.**

410-260-3460

**Date**

March 5, 2020

**Title 27**  
**CRITICAL AREA COMMISSION FOR THE CHESAPEAKE  
AND ATLANTIC COASTAL BAYS**

**Subtitle 01 CRITERIA FOR LOCAL CRITICAL AREA PROGRAM  
DEVELOPMENT**

**27.01.01 General Provisions**

**Subtitle 01 CRITERIA FOR LOCAL CRITICAL AREA PROGRAM  
DEVELOPMENT**

**27.01.02 Development in the Critical Area**

**Subtitle 01 CRITERIA FOR LOCAL CRITICAL AREA PROGRAM  
DEVELOPMENT**

**27.01.07 Surface Mining in the Critical Area**

**Subtitle 02 DEVELOPMENT IN THE CRITICAL AREA RESULTING FROM  
STATE AND LOCAL AGENCY PROGRAMS**

**27.02.01 General Provisions**

**Subtitle 02 DEVELOPMENT IN THE CRITICAL AREA RESULTING FROM  
STATE AND LOCAL AGENCY PROGRAMS**

**27.02.05 State Agency Actions Resulting in Development on State-Owned Lands**

Authority: Natural Resources Article, §§8-1806, 8-1808(c), Annotated Code of Maryland

**Notice of Proposed Action**

[]

The Critical Area Commission for the Chesapeake and Atlantic Coastal Bays proposes to amend Regulation .01 under COMAR 27.01.01 General Provisions; amend Regulation .05 under COMAR 27.01.02 Development in the Critical Area; repeal existing Regulations .01 and .03, adopt new Regulations .01, .01-1 and .03, and amend Regulation .02 under COMAR 27.01.07 Surface Mining in the Critical Area; amend Regulation .01 under COMAR 27.02.01 General Provisions; and repeal existing Regulation .08 and adopt new Regulations .08, .08-1, .08-2, and .08-3 under COMAR 27.02.05 State Agency Actions Resulting in Development on State-Owned Land.

This action was considered by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays at an open meeting held on March 4, 2020, pursuant to General Provisions Article, §3-302(c), Annotated Code of Maryland.

**Statement of Purpose**

The purpose of this action is to modernize the drafting style, update, and where necessary, delete certain outdated provisions. The proposal does not include any

additional regulatory requirements of the affected regulated community. The amendment to Regulation .05 of COMAR 27.01.02 is to clarify existing requirements.

### **Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

### **Estimate of Economic Impact**

The proposed action has no economic impact.

### **Economic Impact on Small Businesses**

The proposed action has minimal or no economic impact on small businesses.

### **Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

### **Opportunity for Public Comment**

Comments may be sent to Lisa Hoerger, Regulations Coordinator, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, 1804 West Street, Suite 100, Annapolis, MD 21401, or call 410-260-3460, or email to [lisa.hoerger@maryland.gov](mailto:lisa.hoerger@maryland.gov), or fax to 410-974-5338. Comments will be accepted through May 11, 2020. A public hearing has not been scheduled.

### **Economic Impact Statement Part C**

A. Fiscal Year in which regulations will become effective: FY 2020

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

Yes

C. If 'yes', state whether general, special (exact name), or federal funds will be used:  
General

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

E. If these regulations have no economic impact under Part A, indicate reason briefly:  
The proposed regulations modernize the drafting style, update, and where necessary, delete certain outdated provisions. The proposal does not include any additional regulatory requirements of the affected regulated community.

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

The proposed regulations modernize the drafting style, update, and where necessary, delete certain outdated provisions. The proposal does not include any additional regulatory requirements of the affected regulated community.

#### G. Small Business Worksheet:

1a. Intended Beneficiaries. Who are the intended beneficiaries of the proposed regulation? Are these intended beneficiaries primarily households or businesses?

The regulated community is the intended beneficiary since the regulations will be updated and will clarify certain provisions.

1b. Intended Beneficiaries: Households. If households are the primary intended beneficiaries, will the proposal affect their income or purchasing power such that the volume or patterns of their consumer spending will change? If so, what directions of change would you anticipate? Will these expected spending changes have a disproportionate impact on small businesses? Can you descriptively identify the industries or types of business activities that are impacted?

Households will not be affected by the proposed action.

1c. Intended Beneficiaries: Businesses. If businesses are the intended beneficiaries, identify the businesses by industry or by types of business activities. How will businesses be impacted? Are these Maryland establishments disproportionately small businesses? If so, how will these Maryland small businesses be affected? Can you identify or estimate the present number of small businesses affected? Can you estimate the present total payroll or total employment of small businesses affected?

Businesses will not be affected by the proposed action.

2a. Other Direct or Indirect Impacts: Adverse. Businesses may not be the intended beneficiaries of the proposal. Instead, the proposal may direct or otherwise cause businesses to incur additional expenses of doing business in Maryland. Does this proposal require Maryland businesses to respond in such a fashion that they will incur additional work-time costs or monetary costs in order to comply? Describe how Maryland establishments may be adversely affected. Will Maryland small businesses bear a disproportionate financial burden or suffer consequences that affect their ability to compete? Can you estimate the possible number of Maryland small businesses adversely affected? (Note that small business compliance costs in the area of regulation are the sum of out-of-pocket (cash) costs plus time costs — usually expressed as payroll, akin to calculations for legislative fiscal notes. Precise compliance costs may be difficult to estimate, but the general nature of procedures that businesses must accomplish to comply can be described.)

None.

2b. Other Direct or Indirect Impacts: Positive. Maryland businesses may positively benefit by means other than or in addition to changed consumer spending patterns. How may Maryland businesses be positively impacted by this initiative? Will Maryland small businesses share proportionately or disproportionately in these gains? Can you estimate

the possible number of Maryland small businesses positively affected?  
None.

3. Long-Term Impacts. There are instances where the longer run economic impact effect from regulations differ significantly from immediate impact. For example, regulations may impose immediate burdens on Maryland small businesses to comply, but the overall restructuring of the industry as a consequence of monitoring and compliance may provide offsetting benefits to the affected small businesses in subsequent years. Can you identify any long run economic impact effects on Maryland small businesses that over time (a) may compound or further aggravate the initial economic impact described above, or (b) may mitigate or offset the initial economic impact described above?

There is no long-term economic impact.

4. Estimates of Economic Impact. State Government Article, §2-1505.2 requires that an agency include estimates, as appropriate, directly relating to: (1) cost of providing goods and services; (2) effect on the work force; (3) effect on the cost of housing; (4) efficiency in production and marketing; (5) capital investment, taxation, competition, and economic development; and (6) consumer choice.

(1) There is no anticipated effect on the cost of providing goods and services; (2) There is no anticipated effect on the work force; (3) There is no anticipated effect on the cost of housing; (4) There is no anticipated effect on efficiency in production and marketing; (5) There is no anticipated capital investment, taxation, competition, and economic development; and (6) There is no anticipated effect on consumer choice.

Attached Document:

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## **Title 27 CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS**

### **Subtitle 01 CRITERIA FOR LOCAL CRITICAL AREA PROGRAM DEVELOPMENT**

#### **Chapter 01 General Provisions**

Authority: Natural Resources Article, §§8-1806, 8-1808(c), and 8-1814, Annotated Code of Maryland

##### **.01 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1)—(44) (text unchanged)

[(45)"Nonrenewable resources" means resources that are not naturally regenerated or renewed.]

(46)—(48) (text unchanged)

[(49)"Overburden" means the strata or material in its natural state, before its removal by surface mining,

overlying a mineral deposit, or in between mineral deposits.]

(50)—(55) (text unchanged)

[(56)"Reclamation" means the reasonable rehabilitation of disturbed land for useful purposes, and the protection of the natural resources of adjacent areas, including waterbodies.]

(56-1)—(58) (text unchanged)

[(59) "Renewable resource" means a resource that can renew or replace itself and, therefore, with proper management, can be harvested indefinitely.]

(60)—(65) (text unchanged)

[(66)"Spoil pile" means the overburden and reject materials as piled or deposited during surface mining.]

(67)—(73-1) (text unchanged)

[(74)"Wash plant" means a facility where sand and gravel is washed during processing.]

(75)—(79) (text unchanged)

## Chapter 02 Development in the Critical Area

Authority: Natural Resources Article, §§8-1806, 8-1808(c), and 8-1811, Annotated Code of Maryland

### .05 Resource Conservation Areas.

A.—B. (text unchanged)

C. In developing their Critical Area programs, local jurisdictions shall use all of the following criteria for resource conservation areas:

(1)—(3) (text unchanged)

(4) Land within the resource conservation area may be developed for residential uses at a density not to exceed one dwelling unit per 20 acres. *A local jurisdiction may not authorize a variance to the one dwelling unit per 20 acre density.* Within this limit of overall density, minimum lot sizes may be determined by the local jurisdiction. Local jurisdictions are encouraged to consider such mechanisms as cluster development, transfer of development rights, maximum lot size provisions, and/or additional means to maintain the land area necessary to support the protective uses.

(5)—(10) (text unchanged)

D. (text unchanged)

## Chapter 07 Surface Mining in the Critical Area

Authority: Natural Resources Article, §8-1808(d), Annotated Code of Maryland

### .01 Definitions.

[A. "Surface mining" means:

(1) The breaking of the surface soil in order to extract or remove minerals in the Critical Area;

(2) Any activity or process constituting all or part of a process for the extraction or removal of minerals from their original location in the Critical Area; and

(3) The extraction of sand, gravel, rock, stone, earth, or fill from borrow pits for highway construction purposes or other public facilities.

B. For the purposes of this chapter, surface mining also means:

(1) Operations engaged in processing minerals at the site of extraction;

(2) Removal of overburden and mining of limited amounts of any mineral when done for the purpose of prospecting and, to the extent necessary, to determine the location, quantity, or quality of any natural deposit; and

(3) Mining operations, if the affected land exceeds 1 acre or more in area.]

A. *In this chapter, the following terms have the meanings indicated.*

B. *Terms Defined.*

(1) "Affected land" has the meaning stated in Environment Article, §15-801, Annotated Code of Maryland.

(2) "Borrow pit" has the meaning stated in Environment Article, §15-801, Annotated Code of Maryland.

(3) "Mineral" has the meaning stated in Environment Article, §15-801, Annotated Code of Maryland.

(4) "Overburden" has the meaning stated in Environment Article, §15-801, Annotated Code of Maryland.

(5) "Reclamation" means:

(a) *The protection of a natural resource that is located in an area adjacent to a surface mining activity, including a forest, wildlife habitat, waterbody, and wetland; and*

(b) *The reasonable rehabilitation of affected land for a useful purpose.*

(6) "Spoil pile" has the meaning stated in Environment Article, §15-801, Annotated Code of Maryland.

(7) Surface mining.

(a) "Surface mining" means:

(i) *The breaking of surface soil located in the Critical Area in order to extract or remove a mineral;*

(ii) *An activity or process that is part of the method of extraction or removal of a mineral from its original location in the Critical Area; and*

(iii) *The extraction or removal of sand, gravel, rock, stone, earth, or fill from a borrow pit for the purpose of constructing a road or another public facility.*

(b) *“Surface mining” includes:*

(i) *An activity related to the processing of a mineral at the site of extraction or removal;*

(ii) *Extraction or removal of overburden and mining of a limited amount of a mineral when done for the purpose of prospecting, to the extent necessary, for the purpose of determining the location, quantity, or quality of a natural deposit; and*

(iii) *A mining activity.*

(c) *“Surface mining” does not include an activity or process that is excluded under the provisions of Environment Article, §15-807, Annotated Code of Maryland or COMAR 26.21.01.08.*

(8) *Wash plant.*

(a) *“Wash plant” means a facility where sand or gravel is washed during processing.*

(b) *“Wash plant” includes a stockpile, a wash pond, and related washing equipment.*

#### **.01-1 Applicability and Construction.**

A. *The provisions of this chapter are applicable:*

(1) *In accordance with Land Use Article, §3-102, Annotated Code of Maryland, to each local jurisdiction in the Critical Area that is required to include a mineral resources element in its comprehensive plan;*

(2) *To each surface mining activity for which a license, permit, or other approval was issued on or after the date of local program approval; and*

(3) *In addition to any other statutory or regulatory requirement applicable under federal or State law.*

B. *Notwithstanding any other provision of law, the provisions of this chapter may not be construed to prohibit the location or use of a water dependent facility, as covered in COMAR 27.01.03, for the transport of a surface mining product or by-product.*

#### **.02 Policies.**

In developing [their] *and updating its* Critical Area [programs, local jurisdictions] *program, a local jurisdiction shall [use the following policies when addressing surface mining] assure that due consideration is accorded to:*

A. *When locating a surface mining activity, avoidance or, in the alternative, minimization of:*

(1) *The substantial loss of renewable resource land; and*

(2) *The degradation of water quality; and*

**B. [Assure that] *When conducting a surface mining activity:***

(1) *Utilization of all available measures [be taken] to protect the Critical Area from all sources of pollution resulting from that [surface mining operations including, but not limited to,] activity, including sedimentation and siltation, chemical and petrochemical use and spillage, and storage or disposal of [wastes, dusts, and spoils] waste, dust, or spoil; and*

[B. Assure that mining be conducted in a way to permit the] (2) *Facilitation of site reclamation [of the site], including renewable resource land, as soon as possible and to the maximum extent possible.*

#### **.03 Criteria.**

[In developing their Critical Area programs, local jurisdictions shall use all of the following criteria:

A. *Local jurisdictions shall develop a mineral resources plan and program for management to include in their comprehensive or master plan, if these resources exist in the jurisdiction.*

B. *The plans and programs are to be developed in conjunction with the Department of the Environment and other appropriate agencies.*

C. *Each plan and program shall consist of all of the following:*

(1) *An identification and mapping of the undeveloped land in the Critical Area that should be kept in its undeveloped state until the land can be used to provide or assist in providing a continuous supply of minerals pursuant to Land Use Article, §§1-411 and 3-107, Annotated Code of Maryland.*

(2) *Surface mining areas which include Habitat Protection Areas under COMAR 27.01.09; and*

(3) *An identification of appropriate post-excavation uses for this land such as recreation, habitat restoration, open space use, or development in accordance with the guidelines for development in COMAR 27.01.02.*

D. *Local authorities shall establish regulations that designate those portions of the Critical Area that are unsuitable for future sand and gravel operations and shall prohibit those operations therein. Areas are unsuitable where:*

(1) *Important natural resources such as threatened and endangered species, areas of scientific value, or rare assemblages of species occur as discussed in COMAR 27.01.09 of these regulations;*

(2) *Areas where highly erodible soils exist;*

(3) The use of renewable resource lands would result in the substantial loss of long range (that is, 25 years or more) productivity of forest and agriculture, or would result in a degrading of water quality or a loss of vital habitat; or

(4) The lands are within 100 feet of the mean high water line of tidal waters or the edge of streams.

E. Future wash plants including ponds, spoil piles, and equipment may not be located within the Buffer as defined in COMAR 27.01.09.

F. Existing wash ponds shall be reclaimed as soon as possible after the cessation of a sand and gravel operation.

G. To the fullest extent possible, existing sand and gravel operations shall conduct their extraction activities so as to provide, at a minimum, a 100-foot buffer of natural vegetation between the operation and the mean high water line of tidal waters or the edges of streams, and tidal wetlands, whichever is further inland.]

*In developing and updating its Critical Area program, a local jurisdiction shall:*

*A. In conjunction with, as applicable, the Departments of Agriculture, Environment, and Natural Resources, and any other appropriate federal or State agency, develop a mineral resources plan and management program that is included in its comprehensive plan and consists of:*

*(1) In accordance with Land Use Article, §§1-411 and 3-107, Annotated Code of Maryland, the identification and mapping of the undeveloped land in the Critical Area that is best kept in its undeveloped state until the land can be used to provide or assist in providing a continuous supply of minerals;*

*(2) Each surface mining area that includes a habitat protection area under COMAR 27.01.09; and*

*(3) In accordance with COMAR 27.01.02, at each location where surface mining is, or has been, conducted, the identification of:*

*(a) Post-reclamation land uses that, where applicable, prioritize the establishment or re-establishment of renewable resource products, such as agriculture and forestry, and other land uses that benefit water quality and habitat, such as wetlands, habitat restoration, and open space; and*

*(b) Any other appropriate post-reclamation land use, such as recreation and development;*

*B. Designate each portion of the Critical Area that is unsuitable for surface mining and prohibit surface mining in those locations, including:*

*(1) In accordance with the provisions of COMAR 27.01.09, a habitat protection area;*

*(2) An area where highly erodible soil exists; and*

*(3) An area that is within 100 feet immediately landward from mean high water of tidal waters or from the edge of a bank of a tributary stream, unless:*

*(a) A license, permit, or other approval to conduct a specific aspect of surface mining was issued before the date of local program approval; and*

*(b) If expansion of the scope or size of the surface mining activity has occurred since the date of local program approval, the expansion complies with State law and local program requirements;*

*C. Require the reclamation of a wash pond in accordance with State law and local program requirements; and*

*D. Prohibit the location of a wash plant within the buffer, as covered in COMAR 27.01.09.*

## **Subtitle 02 DEVELOPMENT IN THE CRITICAL AREA RESULTING FROM STATE AND LOCAL AGENCY PROGRAMS**

### **Chapter 01 General Provisions**

Authority: Natural Resources Article, §§8-1806 and 8-1814, Annotated Code of Maryland

#### **.01 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1)—(37) (text unchanged)

[(38) "Overburden" means the strata or material in its natural state, before its removal by surface mining, overlying a mineral deposit, or in between mineral deposits.]

(39)—(42) (text unchanged)

[(43) "Reclamation" means the reasonable rehabilitation of disturbed land for useful purposes, and the protection of the natural resources of adjacent areas, including waterbodies.]

(44)—(51) (text unchanged)

[(52) "Spoil pile" means the overburden and reject materials as piled or deposited during surface mining.]

(53)—(60) (text unchanged)

[(61) "Wash plant" means a facility where sand and gravel is washed during processing.]

(62)—(65) (text unchanged)

## Chapter 05 State Agency Actions Resulting in Development on State-Owned Land

Authority: Natural Resources Article, §§8-1806 and 8-1814, Annotated Code of Maryland

### [.08 Surface Mining.

#### A. Definition.

- (1) "Surface mining" means:
  - (a) The breaking of the surface soil in order to extract or remove minerals in the Critical Area;
  - (b) Any activity or process constituting all or part of a process for the extraction or removal of minerals from their original location in the Critical Area;
  - (c) The extraction of sand, gravel, rock, stone, earth, or fill from borrow pits for highway construction purposes or other public facilities.
- (2) For the purposes of this chapter, surface mining also means:
  - (a) Operations engaged in processing minerals at the site of extraction;
  - (b) Removal of overburden and mining of limited amounts of any mineral when done for the purpose of prospecting and to the extent necessary to determine the location, quantity, or quality of any natural deposit; and
  - (c) Mining operations, if the affected land exceeds 1 acre or more in area.

B. Criteria. When surface mining occurs on State-owned lands, the agency administering these lands shall assure that the operations are conducted according to the following criteria:

- (1) Assure that all available measures be taken to protect the Critical Area from all sources of pollution from surface mining operations including, but not limited to, sedimentation and siltation, chemical and petrochemical use and spillage, and storage or disposal of wastes, dusts, and spoils.
- (2) Assure that mining is conducted in a way to permit the reclamation of the site as soon as possible and to the extent possible.
- (3) Provide that future sand and gravel operations do not occur in areas unsuitable for mining. Areas unsuitable occur where:
  - (a) Important natural resources such as threatened and endangered species, areas of scientific value, or rare assemblages of species occur as discussed in Regulations .09—.13 of this chapter;
  - (b) Areas where highly erodible soils exist;
  - (c) The use of renewable resource lands would result in the substantial loss of long range (that is, 25 years or more) productivity of forest and agriculture, or would result in a degrading of water quality or a loss of vital habitat; or
  - (d) The lands are within 100 feet of the mean high water line of tidal waters or the edge of streams.
- (4) Future wash plants including ponds, spoil piles, and equipment may not be located within the Buffer as defined in Regulation .09.
- (5) Existing wash ponds shall be reclaimed as soon as possible after the cessation of a sand and gravel operation.
- (6) To the fullest extent possible, existing sand and gravel operations shall conduct their extraction activities so as to provide, at a minimum, a 100-foot buffer of natural vegetation between the operation and the mean high water line of tidal waters or the edges of streams, and tidal wetlands, whichever is further inland.]

### *.08 Surface Mining - Definitions.*

A. *In this regulation and in Regulations .08-1 through .08-3 of this chapter, the following terms have the meanings indicated.*

#### *B. Terms Defined.*

- (1) *"Affected land" has the meaning stated in Environment Article, §15-801, Annotated Code of Maryland.*
- (2) *"Borrow pit" has the meaning stated in Environment Article, §15-801, Annotated Code of Maryland.*
- (3) *"Mineral" has the meaning stated in Environment Article, §15-801, Annotated Code of Maryland.*
- (4) *"Overburden" has the meaning stated in Environment Article, §15-801, Annotated Code of Maryland.*
- (5) *"Reclamation" has the meaning stated in COMAR 27.01.07.01.*
- (6) *"Spoil pile" has the meaning stated in Environment Article, §15-801, Annotated Code of Maryland.*
- (7) *"Surface mining" has the meaning stated in COMAR 27.01.07.01.*
- (8) *"Wash plant" has the meaning stated in COMAR 27.01.07.01.*

### *.08-1 Surface Mining – Applicability and Construction.*

A. *The provisions of Regulations .08 through .08-3 of this chapter are applicable in addition to any other statutory or regulatory requirement applicable under federal or State law.*

B. *Notwithstanding any other provision of law, the provisions of Regulations .08 through .08-3 of this chapter may not be construed to prohibit the location or use of a water dependent facility, as covered in Regulation .04 of this chapter, for the transport of a surface mining product or by-product.*

*.08-2 Surface Mining – Policies.*

*When surface mining occurs on State-owned land, the agency administering the land shall assure that due consideration is accorded to:*

*A. When locating a surface mining activity, avoidance, or, in the alternative, minimization, of:*

*(1) The substantial loss of renewable resource land; and*

*(2) The degradation of water quality; and*

*B. When conducting a surface mining activity:*

*(1) Utilization of all available measures to protect the Critical Area from all sources of pollution resulting from that activity, including sedimentation and siltation, chemical and petrochemical use and spillage, and storage or disposal of waste, dust, or spoil; and*

*(2) Facilitation of site reclamation, including renewable resource land, as soon as possible and to the maximum extent possible.*

*.08-3 Surface Mining - Criteria*

*When surface mining occurs on State-owned land, the agency administering the land shall:*

*A. Designate each portion of the Critical Area that is unsuitable for surface mining and prohibit surface mining in those locations, including:*

*(1) In accordance with the provisions of COMAR 27.01.09, a habitat protection area;*

*(2) An area where highly erodible soil exists; and*

*(3) An area that is within 100 feet immediately landward from mean high water of tidal waters or from the edge of a bank of a tributary stream, unless:*

*(a) A license, permit, or other approval to conduct a specific aspect of surface mining was issued before June 11, 1988; and*

*(b) If expansion of the scope or size of the surface mining activity has occurred since June 11, 1988, the expansion complies with State law and local program requirements;*

*B. Require the reclamation of a wash pond in accordance with State law and local program requirements;*

*C. Prohibit the location of a wash plant within the buffer, as covered in COMAR 27.01.09; and*

*D. If applicable, assure that a lessee of the affected land obtains all licenses, permits, and other approvals in accordance with State law and local program requirements.*