

§ 780.27

landslides into the impoundment or impounded material.

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§ 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 30 CFR 816.79.

§ 780.28 Activities in or adjacent to perennial or intermittent streams.

(a) *Applicability.* (1) *In general.* Except as otherwise provided in paragraph (a)(2) of this section, this section applies to applications to conduct surface mining activities in perennial or intermittent streams or on the surface of lands within 100 feet, measured horizontally, of perennial or intermittent streams.

(2) *Exceptions.* (i) *Coal preparation plants not located within the permit area of a mine.* This section does not apply to applications under § 785.21 of this chapter for coal preparation plants that are not located within the permit area of a mine.

(ii) *Stream-channel diversions.* Paragraphs (b) through (e) of this section do not apply to diversions of perennial or intermittent streams, which are governed by § 780.29 of this part and § 816.43 of this chapter.

(b) *Application requirements for surface mining activities in a perennial or intermittent stream.* If you propose to conduct one or more of the activities listed in paragraphs (b)(2) through (b)(4) of § 816.57 of this chapter in a perennial or intermittent stream, your application must demonstrate that—

(1) Avoiding disturbance of the stream is not reasonably possible; and

(2) The proposed activities will comply with all applicable requirements in paragraphs (b) and (c) of § 816.57 of this chapter.

(c) *Application requirements for surface mining activities within 100 feet of a perennial or intermittent stream.* If you propose to conduct surface mining activities within 100 feet of a perennial or

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intermittent stream, but not in the stream itself, and those activities would occur on land subject to the buffer requirement of § 816.57(a)(1) of this chapter, your application must—

(1) Demonstrate that avoiding disturbance of land within 100 feet of the stream either is not reasonably possible or is not necessary to meet the fish and wildlife and hydrologic balance protection requirements of the regulatory program;

(2) Identify any lesser buffer that you propose to implement instead of maintaining a 100-foot undisturbed buffer between surface mining activities and the perennial or intermittent stream; and

(3) Explain how the lesser buffer, together with any other protective measures that you propose to implement, constitute the best technology currently available to—

(i) Prevent the contribution of additional suspended solids to streamflow or runoff outside the permit area to the extent possible, as required by §§ 780.21(h) and 816.41(d)(1) of this chapter; and

(ii) Minimize disturbances and adverse impacts on fish, wildlife, and related environmental values to the extent possible, as required by §§ 780.16(b) and 816.97(a) of this chapter.

(d) *Approval requirements for activities in a perennial or intermittent stream.* Before approving any surface mining activities in a perennial or intermittent stream, the regulatory authority must—

(1) Find in writing that—

(i) Avoiding disturbance of the stream is not reasonably possible; and

(ii) The plans submitted with the application meet all applicable requirements in paragraphs (b) and (c) of § 816.57 of this chapter.

(2) Include a permit condition requiring a demonstration of compliance with the Clean Water Act in the manner specified in § 816.57(a)(2) of this chapter before the permittee may conduct any activities in a perennial or intermittent stream that require authorization or certification under the Clean Water Act.