

Surface Mining Reclamation and Enforcement, Interior

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(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 in any State which authorizes land surveyors to certify the design of primary roads 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 regulatory authority.

(c) *Standard design plans.* The regulatory authority may establish engineering design standards for primary roads through the State program approval process, in lieu of engineering tests, to establish compliance with the minimum static safety factor of 1.3 for all embankments specified in § 817.151(b) of this chapter.

[53 FR 45211, Nov. 8, 1988]

§ 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 regulatory authority and the Mine Safety and Health Administration under 30 CFR 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, retention 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 regulatory authority from requirements specifying hydrologic monitoring.

[44 FR 15366, Mar. 13, 1979, as amended at 48 FR 44780, Sept. 30, 1983]

§ 784.26 Air pollution control plan.

For all surface operations associated with underground mining activities, the application shall contain an air pollution control plan which includes the following:

(a) An air quality monitoring program, if required by the regulatory authority, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices, under paragraph (b) of this section to comply with applicable Federal and State air quality standards; and

(b) A plan for fugitive dust control practices, as required under 30 CFR 817.95.

§ 784.28 Surface 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 underground mining permit applications that propose to conduct surface 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

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intermittent streams, which are governed by § 784.29 of this part and § 817.43 of this chapter.

(b) *Application requirements for 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 § 817.57 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 § 817.57 of this chapter.

(c) *Application requirements for surface activities within 100 feet of a perennial or intermittent stream.* If you propose to conduct surface activities within 100 feet of a perennial or intermittent stream, but not in the stream itself, and those activities would occur on the surface of land subject to the buffer requirement of § 817.57(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 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 §§ 784.14(g) and 817.41(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 §§ 784.21(b) and 817.97(a) of this chapter.

(d) *Approval requirements for activities in a perennial or intermittent stream.* Before approving any surface 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 § 817.57 of this chapter.

(2) Include a permit condition requiring a demonstration of compliance with the Clean Water Act in the manner specified in § 817.57(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.

(e) *Approval requirements for surface activities within 100 feet of a perennial or intermittent stream.* Before approving any surface activities that would disturb the surface of land subject to the buffer requirement of § 817.57(a)(1) of this chapter, the regulatory authority must find in writing that—

(1) Avoiding disturbance of the surface 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; and

(2) The measures proposed under paragraphs (c)(2) and (c)(3) of this section 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 §§ 784.14(g) and 817.41(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 §§ 784.21(b) and 817.97(a) of this chapter.

(f) *Relationship to the Clean Water Act.*

(1) In all cases, your application must identify the authorizations and certifications that you anticipate will be needed under sections 401, 402, and 404 of the Clean Water Act, 33 U.S.C. 1341, 1342, and 1344, and describe the steps that you have taken or will take to procure those authorizations and certifications.

(2) The regulatory authority will process your application and may issue the permit before you obtain all necessary authorizations and certifications under the Clean Water Act, 33 U.S.C. 1251 *et seq.*, provided your application meets all applicable requirements of subchapter G of this chapter. However, issuance of a permit does not authorize you to initiate any activities for which Clean Water Act authorization or certification is required. Information submitted and analyses conducted under subchapter G of this chapter may inform the agency responsible for authorizations and certifications under sections 401, 402, and 404 of the Clean Water Act, 33 U.S.C. 1341, 1342, and 1344, but they are not a substitute for the reviews, authorizations, and certifications required under those sections of the Clean Water Act.

[73 FR 75881, Dec. 12, 2008]

§ 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 §817.43 of this chapter.

[44 FR 15366, Mar. 13, 1979. Redesignated and amended at 48 FR 43989, Sept. 26, 1983]

§ 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 §817.181 of this chapter for each facility.

[53 FR 45211, Nov. 8, 1988]

§ 784.200 Interpretive rules related to General Performance Standards.

The following interpretation of rules promulgated in part 784 of this chapter have been adopted by the Office of Surface Mining Reclamation and Enforcement.

(a) *Interpretation of §784.15: Reclamation plan: Postmining land uses.* (1) The

requirements of §784.15(a)(2), for approval of an alternative postmining land use, may be met by requesting approval through the permit revision procedures of §774.13 rather than requesting such approval in the original permit application. The original permit application, however, must demonstrate that the land will be returned to its premining land use capability as required by §817.133(a). An application for a permit revision of this type, (i) must be submitted in accordance with the filing deadlines of §774.13, (ii) shall constitute a significant alteration from the mining operations contemplated by the original permit, and (iii) shall be subject to the requirements of 30 CFR parts 773 and 775.

(b) [Reserved]

[45 FR 64908, Oct. 1, 1980, as amended at 48 FR 44780, Sept. 30, 1983]

PART 785—REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING

Sec.

785.1 Scope.

785.2 Objective.

785.10 Information collection.

785.11 Anthracite surface coal mining and reclamation operations.

785.12 Special bituminous surface coal mining and reclamation operations.

785.13 Experimental practices mining.

785.14 Mountaintop removal mining.

785.15 Steep slope mining.

785.16 Permits incorporating variances from approximate original contour restoration requirements for steep slope mining.

785.17 Prime farmlands.

785.18 Variances for delay in contemporaneous reclamation requirement in combined surface and underground mining activities.

785.19 Surface coal mining and reclamation operations on areas or adjacent to areas including alluvial valley floors in the arid and semi-arid areas west of the 100th meridian.

785.20 Augering.

785.21 Coal preparation plants not located within the permit area of a mine.

785.22 In situ processing activities.

785.25 Lands eligible for re-mining.

AUTHORITY: 30 U.S.C. 1201 *et seq.* as

SOURCE: 44 FR 15370, Mar. 13, 1979, unless otherwise noted.