§ 817.114 Revegetation: Mulching and other soil stabilizing practices.

Suitable mulch and other soil stabilizing practices shall be used on all areas that have been regraded and covered by topsoil or topsoil substitutes. The regulatory authority may waive this requirement if seasonal, soil, or slope factors result in a condition where mulch and other soil stabilizing practices are not necessary to control erosion and to promptly establish an effective vegetative cover.

[48 FR 40161, Sept. 2, 1983]

§ 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 § 817.111.

(1) Standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority, described in writing, and made available to the public.

(2) Standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the success standard. The sampling techniques for measuring success shall use a 90-percent statistical confidence interval (i.e., a one-sided test with a 0.10 alpha error).

(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 such other success standards approved by the regulatory authority.

(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 such other success standards approved by the regulatory authority.

(3) For areas to be developed for fish and wildlife habitat, recreation, undeveloped land, or forest products, success of vegetation shall be determined on the basis of tree and shrub stocking and vegetative ground cover. Such parameters are described as follows:

(i) Minimum stocking and planting arrangements shall be specified by the regulatory authority 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 programwide 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 percent of the trees and shrubs used to determine such success shall have been in place for 60 percent of the applicable minimum period of responsibility. The requirements of this section apply to trees and shrubs that have been seeded or transplanted and can be met when records of woody vegetation planted show that no woody plants were planted during the last two growing seasons of the responsibility period and, if any replanting of woody plants took place during the responsibility period, the total number planted during the last 60 percent of that period is less than 20 percent of the total number of woody plants required. Any replanting must be by means of transplants to allow for adequate accounting of plant stocking. This final accounting may include volunteer trees and shrubs of approved species. Volunteer trees and shrubs of approved species shall be deemed equivalent to planted specimens two years of age or older and can be counted towards success. Suckers on shrubby vegetation can be counted as volunteer plants when it is evident the shrub community is vigorous and expanding.
(iii) Vegetative ground cover shall not be less than that required to achieve the approved postmining land use.

(4) For areas to be developed for industrial, commercial, or residential use less than 2 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 regulatory authority in accordance with paragraph (c)(4) of this section.

(2) In areas of more than 26.0 inches of annual average precipitation, the period of responsibility shall continue for a period of not less than:

(i) Five full years, except as provided in paragraph (c)(2)(i) of this section. The vegetation parameters identified in paragraph (b) of this section for grazing land, pasture land, or cropland shall equal or exceed the approved success standard during the growing season of any 2 years of the responsibility period, except the first year. Areas approved for the other uses identified in paragraph (b) of this section shall equal or exceed the standards during the growing seasons of the last two consecutive years of the responsibility period.

(ii) Five full years for lands eligible for remining included in a permit for which a finding has been made under §773.15(m) of this chapter. To the extent that the success standards are established by paragraph (b)(5) of this section, the lands must equal or exceed the standards during the growing season of the last two consecutive years of the responsibility period.

(4) The regulatory authority may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, provided it obtains prior approval from the Director in accordance with §732.17 of this chapter that the practices are normal husbandry practices, 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 transplanting specifically necessitated by such actions.