the design and construction of all div- 

ections of perennial and intermittent 

streams and all stream restorations. 

The design certification must certify 

that the design meets the design re- 

quirements of this section and any de-

sign criteria set by the regulatory au-

thority. The construction certification 

must certify that the stream-channel 

diversion or stream restoration meets 

all construction requirements of this 

section and is in accordance with the 

approved design.

c) Diversion of miscellaneous flows. (1) 

Miscellaneous flows, which consist of 

all flows except for perennial and in-

termittent streams, may be diverted 

away from disturbed areas if required 
or approved by the regulatory author-

ity. Miscellaneous flows shall include 
ground-water discharges and ephemeral 

streams.

(2) The design, location, construc-

tion, maintenance, and removal of di-

versions of miscellaneous flows shall 

meet all of the performance standards 

set forth in paragraph (a) of this sec-

tion.

(3) The requirements of paragraph 

(a)(2)(ii) of this section shall be met 

when the temporary and permanent di-

versions for miscellaneous flows are de-

signed so that the combination of 

channel, bank and flood-plain configu-

ration is adequate to pass safely the 

peak runoff of a 2-year, 6-hour precipi-
tation event for a temporary diversion 

and a 10-year, 6-hour precipitation 

event for a permanent diversion.

[48 FR 43993, Sept. 26, 1983, as amended at 73 

FR 75884, Dec. 12, 2008]

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structures.

(a) For the purposes of this section 

only, disturbed areas shall not include 

those areas—

(1) In which the only surface mining 

activities include diversion ditches, silt-

ation structures, or roads that are de-

signed, constructed and maintained in 

accordance with this part; and

(2) For which the upstream area is 

not otherwise distributed by the oper-

ator.