4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 780, 784, 816, and 817

RIN 1029- AC69

[Docket ID: OSM-2012-0010; S1D1S SS08011000 SX066A00067F 134S180110; S2D2S SS08011000 SX066A00 33F 13XS501520]

Excess Spoil, Coal Mine Waste, Diversions, and Buffer Zones for Perennial and Intermittent Streams

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE or OSM), are amending our regulations concerning stream buffer zones, stream-channel diversions, excess spoil, and coal mine waste to comply with an order issued by the U.S. District Court for the District of Columbia on February 20, 2014, which vacated the stream buffer zone rule that we published December 12, 2008. The court remanded the matter to us for further proceedings consistent with the decision. In relevant part, the Memorandum Decision stated that vacatur of the 2008 stream buffer zone rule resulted in reinstatement of the regulations in effect before the vacated rule took effect. Therefore, the rule that we are publishing today removes the provisions of

the vacated 2008 rule and reinstates the corresponding regulations in effect before the effective date of the 2008 rule (January 12, 2009).

DATES: This regulation is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The incorporation by reference of the publication listed in 30 CFR 780.25(a)(2) and 784.16(a)(2) was approved by the Director of the Federal Register on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: John Trelease, Division of Regulatory Support, (202) 208-2783, or via email at jtrelease@osmre.gov.

SUPPLEMENTARY INFORMATION:

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I. Why are we publishing this rule?

On December 12, 2008, we published a final rule that amended our regulations concerning stream buffer zones, stream-channel diversions, siltation structures, impoundments, excess spoil, and coal mine waste. See 73 FR 75814-75885. This rule is known as the 2008 stream buffer zone (SBZ) rule or the 2008 rule. Among other

changes, the 2008 rule revised our former regulations at 30 CFR 816.57 and 817.57, related to the mining activities allowed to occur through perennial or intermittent streams, as well as on the surface of land within 100 feet of a perennial or intermittent stream. Prior to the 2008 rule, these two provisions had previously been amended on June 30, 1983 (48 FR 30312-30329). The 2008 rule also added requirements at 30 CFR 780.35 and 784.19 that surface coal mining operations be designed to minimize the creation of excess spoil and the adverse environmental impacts of fills constructed to dispose of excess spoil and coal mine waste.

A total of ten organizations challenged the validity of the 2008 SBZ rule in two complaints originally filed on December 22, 2008, and January 16, 2009: Coal River Mountain Watch, et al. v. Salazar, No. 08-2212 (D.D.C.) and National Parks Conservation Ass'n v. Salazar, No. 09-115 (D.D.C.). The references to former Secretary of the Interior Ken Salazar in these case titles were subsequently replaced by references to his successor, Sally Jewell.

On February 20, 2014, the court vacated the 2008 rule because "OSM's determination that the revisions to the stream protection rule encompassed by the 2008 Rule would have no effect on threatened and endangered species or critical habitat was not a rational conclusion" and that, therefore, OSM's failure to initiate consultation on the 2008 rule was a violation of section 7(a)(2) of the Endangered Species Act. National Parks Conservation Ass'n (NPCA) v. Jewell, 2014 U.S. Dist. LEXIS 152383 at *21 (D.D.C. Feb. 20, 2014). The court remanded the vacated rule to us for further proceedings consistent with the decision. Id. at *35. The court's decision also stated that vacatur of the 2008 rule would result in the reinstatement of the rule that was in

effect before the vacated rule took effect. Id. at *31. We posted the court's decision on our Web site to notify the public of the ruling shortly after the order was released. The decision has not been appealed.

Therefore, consistent with the Memorandum Decision and Order of the court, the rule that we are publishing today reinstates the corresponding provisions of the regulations that were in effect before the effective date of the 2008 rule (January 12, 2009), including the 1983 version of the stream buffer zone rule. In addition, the rule that we are reinstating today updates 30 CFR 780.25(a)(2) and 784.16(a)(2) to include our current physical address and a website for accessing a document [the Soil Conservation Service's Technical Release No. 60 (210-VI-TR60, Oct. 1985), entitled ''Earth Dams and Reservoirs''] that is incorporated by reference. The rule also reinstates 30 CFR 780.25(a)(3), which was erroneously removed as part of the codification of the 2008 rule.

We are reinstating 30 CFR 817.46(b)(3) as it existed prior to adoption of the 2008 rule, which redesignated it as paragraph (b)(2). Redesignated paragraph (b)(2) was erroneously removed during codification of a subsequent technical rulemaking in 2010 (75 FR 60272, Sept. 29, 2010).

Finally, as noted above, as a result of the court's decision in NPCA v. Jewell, the vacatur of the 2008 rule resulted in the reinstatement of the rule that was in effect before the vacated rule took effect. This reinstatement includes 30 CFR 816.46(b)(2) and 817.46(b)(2), which were removed by the 2008 rule. However, prior to the publication of the 2008 rule, these paragraphs were suspended effective December 22,

1986, because those paragraphs were struck down upon judicial review. See In re: Permanent Surface Mining Regulation Litigation II, Round III, 620 F. Supp. 1519, 1566–1568 (D.D.C. July 15, 1985) and 51 FR 41961 (Nov. 20, 1986). In this final rule, we are adding a sentence to the end of paragraph (b)(2) in both 30 CFR 816.46 and 817.46 acknowledging the suspension.

II. Why are we publishing this rule as a direct final rule that takes effect immediately?

We are publishing this rule as a direct final rule without prior notice and opportunity for public comment because this rule is necessary to reflect the court order vacating the 2008 rule, which resulted in reinstatement of the regulations in effect before the effective date of the 2008 rule. See NPCA v. Jewell, 2014 U.S. Dist. LEXIS 152383 at *31 (D.D.C. Feb. 20, 2014). The court's order was issued on February 20, 2014.

Section 553 of the Administrative Procedure Act requires that agencies provide notice and opportunity for comment on all rules, except "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public comment are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(B). In this case, we have determined that notice and opportunity for public comment are unnecessary because, in NPCA v. Jewell, the court has already vacated the 2008 rule and stated what rules replaced the vacated provisions. In this rulemaking, we are merely making changes to the CFR text

to conform to the court's order and are not exercising any discretionary authority. Therefore, public comment would not be useful in determining the content of this final rule.

Section 553(d) of the Administrative Procedure Act also provides that agencies must publish a final rule "not less than 30 days before its effective date, except … as otherwise provided by the agency for good cause found and published with the rule." 5 U.S.C. 553(d). For the reasons just discussed, we have determined we have good cause for waiver of the 30-day delay in the effective date of the rule after publication.

List of Subjects

30 CFR Part 780

Incorporation by reference, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 784

Incorporation by reference, Reporting and recordkeeping requirements, Underground mining.

30 CFR Part 816

Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 817

Environmental protection, Reporting and recordkeeping requirements, Underground mining.

Dated: December 13, 2014.

Janice M. Schneider,

Assistant Secretary - Land and Minerals Management.

Accordingly, the Department is amending 30 CFR parts 780, 784, 816 and 817 as set forth below.

PART 780–SURFACE MINING PERMIT APPLICATIONS–MINIMUM REQUIREMENT FOR RECLAMATION AND OPERATION PLAN

1. The authority citation for part 780 continues to read as follows:

AUTHORITY**:** 30 U.S.C. 1201 et seq. and 16 U.S.C. 470 et seq.

2. The part heading is revised to read as set forth above.

3. Section 780.10 is revised to read as follows:

§ 780.10 Information collection.

(a) The collections of information contained in Part 780 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1029–0036. The information will be used by the regulatory authority to determine whether the applicant can comply with the applicable performance and environmental standards in Public Law 95–87. Response is required to obtain a benefit.

(b) Public Reporting burden for this information is estimated to average 28 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the

collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 203, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project 1029–0036, Washington, DC 20503.

4. Amend § 780.14 by revising paragraphs (b)(11) and (c) to read as follows:

§ 780.14 Operation plan: Maps and plans.

* * * * *

(b) * * *

(11) Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with 30 CFR 780.25, and fill area for the disposal of excess spoil in accordance 30 CFR 780.35.

(c) Except as provided in §§ 780.25(a)(2), 780.25(a)(3), 780.35(a), 816.71(b), 816.73(c), 816.74(c) and 816.81(c) of this chapter, cross sections, maps and plans required under paragraphs (b) (4), (5), (6), (10) and (11) of this section shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer, a professional geologist, or in any State which authorizes land surveyors to prepare and certify such cross sections, maps and plans, a qualified,

registered, professional, land surveyor, with assistance from experts in related fields such as landscape architecture.

5. Amend § 780.25 as follows:

a. Revise the section heading, paragraph (a) introductory text, paragraph (a)(1) introductory text, and paragraph (a)(2);

b. Add paragraph (a)(3);

c. Revise paragraph (c)(2) and remove paragraph (c)(4);

d Revise paragraph (d); and

e. Add paragraphs (e) and (f).

The revisions and additions read as follows:

§ 780.25 Reclamation plan: Siltation structures, impoundments, banks, dams, and embankments.

(a) General. Each application shall include a general plan and a detailed design plan for each proposed siltation structure, water impoundment, and coal processing waste bank, dam, or embankment within the proposed permit area.

(1) Each general plan shall—

* * * * *

(2) Impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210-VI-TR60, Oct. 1985), ‘‘Earth Dams and Reservoirs,’’ Technical Release No. 60 (TR–60) shall comply with the requirements of this section for structures that meet or exceed the size of other criteria of the Mine Safety and Health Administration (MSHA). The technical release is hereby incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. TR-60 may be viewed and downloaded from OSM's website at http://www.osmre.gov/programs/TDT/damsafety.shtm. It also is available for inspection at the OSM Headquarters Office, Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 252, 1951 Constitution Ave. NW, Washington, DC or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. Each detailed design plan for a structure that meets or exceeds the size or other criteria of MSHA, § 77.216(a) of this chapter shall:

(i) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer with assistance from experts in related fields such as geology, land surveying, and landscape architecture;

(ii) Include any geotechnical investigation, design, and construction requirements for the structure;

(iii) Describe the operation and maintenance requirements for each structure; and

(iv) Describe the timetable and plans to remove each structure, if appropriate.

(3) Each detailed design plan for structures not included in paragraph (a)(2) of this section shall:

(i) 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 prepare and certify such plans, a qualified, registered, professional land surveyor, except that all coal processing waste dams and embankments covered by §§ 816.81-816.84 of this chapter shall be certified by a qualified, registered, professional engineer;

(ii) Include any design and construction requirements for the structure, including any required geotechnical information;

(iii) Describe the operation and maintenance requirements for each structure; and

(iv) Describe the timetable and plans to remove each structure, if appropriate.

* * * * *

(c) * * *

(2) Each plan for an impoundment meeting the size or other criteria of the Mine Safety and Health Administration shall comply with the requirements of §§ 77.216–1 and 77.216–2 of this title. The plan required to be submitted to the District Manager of MSHA under § 77.216 of this title shall be submitted to the regulatory authority as part of the permit application in accordance with paragraph (a) of this section.

* * * * *

(d) Coal processing waste banks. Coal processing waste banks shall be designed to comply with the requirements of 30 CFR 816.81–816.84.

(e) Coal processing waste dams and embankments. Coal processing waste dams and embankments shall be designed to comply with the requirements of 30 CFR 816.81–816.84. Each plan shall comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216–1 and 77.216–2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

(1) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.

(2) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.

(3) All springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(4) Consideration shall be given to the possibility of mudflows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(f) If the structure meets the Class B or C criteria for dams in TR–60 or meets the size or other criteria of § 77.216(a) of this chapter, each plan under paragraphs (b), (c), and (e) of this section shall include a stability analysis of the structure. The stability

analysis shall include, but not be limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

§ 780.28 [Removed]

6. Remove § 780.28.

7. Revise § 780.35 to read as follows:

§ 780.35 Disposal of excess spoil.

(a) Each application shall contain descriptions, including appropriate maps and cross section drawings, of the proposed disposal site and design of the spoil disposal structures according to 30 CFR 816.71–816.74. These plans shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal, if appropriate, of the site and structures.

(b) Except for the disposal of excess spoil on pre existing benches, each application shall contain the results of a geotechnical investigation of the proposed disposal site, including the following:

(1) The character of bedrock and any adverse geologic conditions in the disposal area,

(2) A survey identifying all springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the disposal site;

(3) A survey of the potential effects of subsidence of the subsurface strata due to past and future mining operations;

(4) A technical description of the rock materials to be utilized in the construction of those disposal structures containing rock chimney cores or underlain by a rock drainage blanket; and

(5) A stability analysis including, but not limited to, strength parameters, pore pressures and long-term seepage conditions. These data shall be accompanied by a description of all engineering design assumptions and calculations and the alternatives considered in selecting the specific design specifications and methods.

(c) If, under 30 CFR 816.71(d), rock-toe buttresses or key-way cuts are required, the application shall include the following:

(1) The number, location, and depth of borings or test pits which shall be determined with respect to the size of the spoil disposal structure and subsurface conditions; and

(2) Engineering specifications utilized to design the rock-toe buttress or key-way cuts which shall be determined in accordance with paragraph (b)(5) of this section.

PART 784–UNDERGROUND MINING PERMIT APPLICATIONS–MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

8. The authority citation for part 784 continues to read as follows:

AUTHORITY**:** 30 U.S.C. 1201 et seq. and 16 U.S.C. 470 et seq.

9. Section 784.10 is revised to read as follows:

§ 784.10 Information collection.

(a) The collections of information contained in Part 784 have been approved by Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1029–0039. The information will be used to meet the requirements of 30 U.S.C. 1211(b), 1251, 1257, 1258, 1266, and 1309a. The obligation to respond is required to obtain a benefit.

(b) Public reporting burden for this information is estimated to average 513 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

10. Amend § 784.16 as follows:

a. Revise the section heading, paragraph (a) introductory text, paragraph (a)(1) introductory text, and paragraph (a)(2);

b. Revise paragraph (c)(2) and remove paragraph (c)(4);

c. Revise paragraph (d); and

d. Add paragraphs (e) and (f).

The revisions and additions read as follows:

§ 784.16 Reclamation plan: Siltation structures, impoundments, banks, dams, and embankments.

(a) General. Each application shall include a general plan and a detailed design plan for each proposed siltation structure, water impoundment, and coal processing waste bank, dam, or embankment within the proposed permit area.

(1) Each general plan shall—

* * * * *

(2) Impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210-VI-TR60, Oct. 1985), ‘‘Earth Dams and Reservoirs,’’ Technical Release No. 60 (TR–60) shall comply with the requirements of this section for structures that meet or exceed the size or other criteria of the Mine Safety and Health Administration (MSHA). The technical release is hereby incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. TR-60 may be viewed or downloaded from OSM's website at http://www.osmre.gov/programs/TDT/damsafety.shtm. It also is available for inspection at the OSM Headquarters Office, Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 252, 1951 Constitution Ave. NW, Washington, DC or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html . Each detailed design plan for a structure that meets or exceeds the size or other criteria of MSHA, § 77.216(a) of this chapter shall:

(i) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer with assistance from experts in related fields such as geology, land surveying, and landscape architecture;

(ii) Include any geotechnical investigation, design, and construction requirements for the structure;

(iii) Describe the operation and maintenance requirements for each structure; and

(iv) Describe the timetable and plans to remove each structure, if appropriate.

* * * * *

(c) * * *

(2) Each plan for an impoundment meeting the size of other criteria of the Mine Safety and Health Administration shall comply with the requirements of §§ 77.216–1 and 77.216–2 of this title. The plan required to be submitted to the District Manager of MSHA under § 77.216 of this title shall be submitted to the regulatory authority as part of the permit application in accordance with paragraph (a) of this section.

* * * * *

(d) Coal processing waste banks. Coal processing waste banks shall be designed to comply with the requirements of 30 CFR 817.81 through 817.84.

(e) Coal processing waste dams and embankments. Coal processing waste dams and embankments shall be designed to comply with the requirements of 30 CFR 817.81 through 817.84. Each plan shall comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216–1 and 77.216–2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will

support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

(1) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.

(2) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.

(3) All springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(4) Consideration shall be given to the possibility of mudflows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(f) If the structure meets the Class B or C criteria for dams in TR–60 or meets the size or other criteria of § 77.216(a) of this chapter, each plan under paragraphs (b), (c), and (e) of this section shall include a stability analysis of the structure. The stability analysis shall include, but not be limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

11. Revise § 784.19 to read as follows:

§ 784.19 Underground development waste.

Each plan shall contain descriptions, including appropriate maps and cross section drawings of the proposed disposal methods and sites for placing underground development waste and excess spoil generated at surface areas affected by surface operations and facilities, according to 30 CFR 817.71 through 817.74. Each plan shall describe the geotechnical investigation, design, construction, operation, maintenance and removal, if appropriate, of the structures and be prepared according to 30 CFR 780.35.

12. Amend § 784.23 by revising paragraphs (b)(10) and (c) to read as follows:

§ 784.23 Operation plan: Maps and plans.

* * * * *

(b) * * *

(10) Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with 30 CFR 784.16 and disposal areas for underground development waste and excess spoil, in accordance with 30 CFR 784.19;

* * * * *

(c) Except as provided in §§ 784.16(a)(2), 784.16(a)(3), 784.19, 817.71(b), 817.73(c), 817.74(c) and 817.81(c) of this chapter, cross sections, maps and plans required under paragraphs (b)(4), (5), (6), (10) and (11) of this section shall be prepared

by, or under the direction of, and certified by a qualified, registered, professional engineer, a professional geologist, or in any State which authorizes land surveyors to prepare and certify such cross sections, maps and plans, a qualified, registered, professional, land surveyor, with assistance from experts in related fields such as landscape architecture.

§ 784.28 [Removed]

13. Remove § 784.28.

PART 816–PERMANENT PROGRAM PERFORMANCE STANDARDS–SURFACE MINING ACTIVITIES

14. The authority citation for part 816 is revised to read as follows:

AUTHORITY: 30 U.S.C. 1201 et seq.; and sec 115 of Pub. L. 98–146.

15. Section 816.10 is revised to read as follows:

§ 816.10 Information collection.

(a) The collections of information contained in part 816 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1029– 0047. The information will be used by the regulatory authority to monitor and inspect surface coal mining activities to ensure that they are in compliance with the Surface Mining Control and Reclamation Act. Response is required to obtain a benefit.

(b) Public Reporting Burden for this information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 203, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1029–0047), Washington, DC 20503.

16. In § 816.11, revise paragraph (e) to read as follows:

§ 816.11 Signs and markers.

* * * * *

(e) Buffer zone markers. Buffer zones shall be marked along their boundaries as required under § 816.57.

* * * * *

17. Amend § 816.43 as follows:

a. Revise paragraph (a)(3);

b. Remove paragraph (a)(4) and redesignate paragraph (a)(5) as paragraph (a)(4);

c. Revise paragraphs (b)(1) and (b)(4); and

d. Remove paragraph (b)(5).

The revisions will read as follows:

§ 816.43 Diversions.

(a) * * *

(3) Temporary diversions shall be removed promptly when no longer needed to achieve the purpose for which they were authorized. The land disturbed by the removal process shall be restored in accordance with this part. Before diversions are removed, downstream water-treatment facilities previously protected by the diversion shall be modified or removed, as necessary, to prevent overtopping or failure of the facilities. This requirement shall not relieve the operator from maintaining water-treatment facilities as otherwise required. A permanent diversion or a stream channel reclaimed after the removal of a temporary diversion shall be designed and constructed so as to restore or approximate the premining characteristics of the original stream channel including the natural riparian vegetation to promote the recovery and the enhancement of the aquatic habitat.

* * * * *

(b) * * *

(1) Diversion of perennial and intermittent streams within the permit area may be approved by the regulatory authority after making the finding relating to stream buffer zones that the diversion will not adversely affect the water quantity and quality and related environmental resources of the stream.

* * * * *

(4) The design and construction of all stream channel diversions of perennial and intermittent streams shall be certified by a qualified registered professional engineer as meeting the performance standards of this part and any design criteria set by the regulatory authority.

* * * * *

18. Amend § 816.46 by redesignating paragraphs (b)(2) through (b)(5) as paragraphs (b)(3) through (b)(6), respectively, and by adding a new paragraph (b)(2) to read as follows:

§ 816.46 Hydrologic balance: Siltation structures.

* * * * *

(b) * * *

(2) All surface drainage from the disturbed area shall be passed through a siltation structure before leaving the permit area, except as provided in paragraph (b)(5) or (e) of this section. The requirements of this paragraph are suspended effective December 22, 1986, per court order.

* * * * *

19. Revise § 816.57 to read as follows:

§ 816.57 Hydrologic balance: Stream buffer zones.

(a) No land within 100 feet of a perennial stream or an intermittent stream shall be disturbed by surface mining activities, unless the regulatory authority specifically authorizes surface mining activities closer to, or through, such a stream. The regulatory authority may authorize such activities only upon finding that—

(1) Surface mining activities will not cause or contribute to the violation of applicable State or Federal water quality standards, and will not adversely affect the water quantity and quality or other environmental resources of the stream; and

(2) If there will be a temporary or permanent stream-channel diversion, it will comply with § 816.43.

(b) The area not to be disturbed shall be designated as a buffer zone, and the operator shall mark it as specified in § 816.11.

20. In § 816.71, revise paragraphs (a) through (d) to read as follows:

§ 816.71 Disposal of excess spoil: General requirements.

(a) General. Excess spoil shall be placed in designated disposal areas within the permit area, in a controlled manner to—

(1) Minimize the adverse effects of leachate and surface water runoff from the fill on surface and ground waters;

(2) Ensure mass stability and prevent mass movement during and after construction; and

(3) Ensure that the final fill is suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use.

(b) Design certification. (1) The fill and appurtenant structures shall be designed using current, prudent engineering practices and shall meet any design criteria established by the regulatory authority. A qualified registered professional engineer experienced in the design of earth and rock fills shall certify the design of the fill and appurtenant structures.

(2) The fill shall be designed to attain a minimum long-term static safety factor of 1.5. The foundation and abutments of the fill must be stable under all conditions of construction.

(c) Location. The disposal area shall be located on the most moderately sloping and naturally stable areas available, as approved by the regulatory authority, and shall be placed, where possible, upon or above a natural terrace, bench, or berm, if such placement provides additional stability and prevents mass movement.

(d) Foundation. (1) Sufficient foundation investigations, as well as any necessary laboratory testing of foundation material, shall be performed in order to determine the design requirements for foundation stability. The analyses of foundation conditions shall take into consideration the effect of underground mine workings, if any, upon the stability of the fill and appurtenant structures.

(2) Where the slope in the disposal area is in excess of 2.8h:1v (36 percent), or such lesser slope as may be designated by the regulatory authority based on local conditions, keyway cuts (excavations to stable bedrock) or rock toe buttresses shall be constructed to ensure stability of the fill. Where the toe of the spoil rests on a downslope, stability analyses shall be performed in accordance with § 780.35(c) of this chapter to determine the size of rock toe buttresses and keyway cuts.

* * * * *

PART 817–PERMANENT PROGRAM PERFORMACNE STANDARDS–UNDERGROUND MINING ACTIVITIES

21. The authority citation for part 817 continues to read as follows:

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

22. Section 817.10 is revised to read as follows:

§ 817.10 Information collection.

(a) The collections of information contained in Part 817 have been approved by Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1029–0048. The information will be used to meet the requirements of 30 U.S.C. 1211, 1251, 1266, and 1309a which provide, among other things, that permittees conducting underground coal mining operations will meet the applicable performance standards of the Act. This information will be used by the regulatory authority in monitoring and inspecting underground mining activities. The obligation to respond is required to obtain a benefit.

(b) Public reporting burden for this information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

23. In § 817.11, revise paragraph (e) to read as follows:

§ 817.11 Signs and markers.

* * * * *

(e) Buffer zone markers. Buffer zones required by § 817.57 shall be clearly marked to prevent disturbance by surface operations and facilities.

* * * * *

24. Amend § 817.43 as follows:

a. Revise paragraph (a)(3);

b. Remove paragraph (a)(4) and redesignate paragraph (a)(5) as paragraph (a)(4);

c. Revise paragraphs (b)(1) and (b)(4); and

d. Remove paragraph (b)(5).

The revisions will read as follows:

§ 817.43 Diversions.

(a) * * *

(3) Temporary diversions shall be removed promptly when no longer needed to achieve the purpose for which they were authorized. The land disturbed by the removal process shall be restored in accordance with this part. Before diversions are removed, downstream water-treatment facilities previously protected by the diversion shall be

modified or removed, as necessary, to prevent overtopping or failure of the facilities. This requirement shall not relieve the operator from maintaining water-treatment facilities as otherwise required. A permanent diversion or a stream channel reclaimed after the removal of a temporary diversion shall be designed and constructed so as to restore or approximate the premining characteristics of the original stream channel including the natural riparian vegetation to promote the recovery and the enhancement of the aquatic habitat.

* * * * *

(b) * * *

(1) Diversion of perennial and intermittent streams within the permit area may be approved by the regulatory authority after making the finding relating to stream buffer zones called for in 30 CFR 817.57 that the diversions will not adversely affect the water quantity and quality and related environmental resources of the stream.

* * * * *

(4) The design and construction of all stream channel diversions of perennial and intermittent streams shall be certified by a qualified registered professional engineer as meeting the performance standards of this part and any design criteria set by the regulatory authority.

* * * * *

25. Amend § 817.46 by redesignating paragraphs (b)(2) through (b)(5) as paragraphs (b)(4) through (b)(7), respectively, and by adding new paragraphs (b)(2) and (b)(3) to read as follows.

§ 817.46 Hydrologic balance: Siltation structures.

* * * * *

(b) * * *

(2) All surface drainage from the disturbed area shall be passed through a siltation structure before leaving the permit area, except as provided in paragraph (b)(5) or (e) of this section. The requirements of this paragraph are suspended effective December 22, 1986, per court order.

(3) Siltation structures for an area shall be constructed before beginning any underground mining activities in that area, and upon construction shall be certified by a qualified registered professional engineer, or, in any State which authorizes land surveyors to prepare and certify plans in accordance with § 784.16(a) of this chapter, a qualified registered professional land surveyor, to be constructed as designed and as approved in the reclamation plan.

*** * * * ***

26. Revise § 817.57 to read as follows:

§ 817.57 Hydrologic balance: Stream buffer zones.

(a) No land within 100 feet of a perennial stream or an intermittent stream shall be disturbed by underground mining activities, unless the regulatory authority

specifically authorizes underground mining activities closer to, or through, such a stream. The regulatory authority may authorize such activities only upon finding that—

(1) Underground mining activities will not cause or contribute to the violation of applicable State or Federal water quality standards and will not adversely affect the water quantity and quality or other environmental resources of the stream; and

(2) If there will be a temporary or permanent stream-channel diversion, it will comply with § 817.43.

(b) The area not to be disturbed shall be designated as a buffer zone, and the operator shall mark it as specified in § 817.11.

27. In § 817.71, revise paragraphs (a) through (d) and add a new paragraph (k) to read as follows:

§ 817.71 Disposal of excess spoil: General requirements.

(a) General. Excess spoil shall be placed in designated disposal areas within the permit area, in a controlled manner to—

(1) Minimize the adverse effects of leachate and surface water runoff from the fill on surface and ground waters;

(2) Ensure mass stability and prevent mass movement during and after construction; and

(3) Ensure that the final fill is suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use.

(b) Design certification. (1) The fill and appurtenant structures shall be designed using current, prudent engineering practices and shall meet any design criteria established by the regulatory authority. A qualified registered professional engineer experienced in the design of earth and rock fills shall certify the design of the fill and appurtenant structures.

(2) The fill shall be designed to attain a minimum long-term static safety factor of 1.5. The foundation and abutments of the fill must be stable under all conditions of construction.

(c) Location. The disposal area shall be located on the most moderately sloping and naturally stable areas available, as approved by the regulatory authority, and shall be placed, where possible, upon or above a natural terrace, bench, or berm, if such placement provides additional stability and prevents mass movement.

(d) Foundation. (1) Sufficient foundation investigations, as well as any necessary laboratory testing of foundation material, shall be performed in order to determine the design requirements for foundation stability. The analyses of foundation conditions shall take into consideration the effect of underground mine workings, if any, upon the stability of the fill and appurtenant structures.

(2) When the slope in the disposal area is in excess of 2.8h:lv (36 percent), or such lesser slope as may be designated by the regulatory authority based on local conditions, keyway cuts (excavations to stable bedrock) or rock toe buttresses shall be constructed to ensure stability of the fill. Where the toe of the spoil rests on a downslope, stability analyses shall be performed in accordance with § 784.19 of this chapter to determine the size of rock toe buttresses and keyway cuts.

* * * * *

(k) Face-up operations. Spoil resulting from face-up operations for underground coal mine development may be placed at drift entries as part of a cut and fill structure, if the structure is less than 400 feet in horizontal length, and designed in accordance with § 817.71.

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