



Kentucky
Department for Surface Mining
Reclamation and Enforcement

Reclamation Advisory Memorandum

From: Carl E. Campbell, Commissioner
Date: October 25, 2001
Subject: Clarification of Permitting Procedures for
Streams Between Fills and Ponds

C.E.C.

RAM # 134

INTRODUCTION

Sediment structures and access roads to those structures have routinely been included in the permit area of mining operations. By mid-2000 it was increasingly apparent that the reach of stream between the mining area and sediment structures must also be included in the permit area, to allow for restoration or mitigation work in stream areas that are affected by the mining operations. Effective September 30, 2000, DSMRE began requiring that these stream areas be permitted and bonded.

KRS 350.060(1) requires persons who engage in surface coal mining and reclamation operations to first obtain from the Cabinet a permit designating the area of land affected by the operation. KRS 350.010(1) defines surface coal mining operations as:

activities conducted on the surface of lands in connection with a surface coal mine and surface impacts incident to an underground mine. . . Surface coal mining operations shall also include the areas upon which the activities occur or where the activities disturb the natural land surface. The areas shall also include any adjacent land, the use of which is incidental to the activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of the activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface resulting from or incident to the activities . . .

Additionally, regional conditions being imposed by the U.S. Army Corps of Engineers on Clean Water Act Section 404 (b) permits for placement of fill in waters of the United States have further highlighted the fact that operators may be conducting sediment cleanout and other restoration or mitigation activities in streams. Thus, SMCRA permits clearly need to include those stream areas that may be affected.

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AREA TO PERMIT AND BOND

Beginning 9/30/2000 DSMRE has required that applications for surface coal mining permits include within the proposed permit area, all stream reaches between sediment ponds and the mining area. Valley fills and head of hollow fills are considered part of the mining area. The area to be permitted, solely for the purpose of stream restoration or mitigation, includes the stream channel, bank to bank, and an access corridor contiguous to the stream. For brevity, and also to emphasize the reason for including these areas in the permit area, we may refer to the area encompassed by the bank-to-bank stream channel and contiguous access corridor together as the "stream restoration zone." (Previously, these areas have sometimes been called "drainage corridors.") The permit area must also include a means of access to the stream restoration zone.

The permit area must also include potentially affected conveyance areas between ponds, where on-bench sediment structures are designed to drain into sediment structures lower in the watershed to insure compliance with effluent limitations. However, the permit area need not include conveyance areas between ponds if the on-bench sediment control structures are designed, constructed, and operated to meet all hydrologic requirements and effluent limitations and if cleanout or other maintenance and restoration of the conveyance areas remains unnecessary.

APPLICABILITY

Stream restoration zones must be addressed in the following permitting actions:

1. Original applications and amendments submitted on or after 9/30/2000;
2. Revisions submitted on or after 9/30/2000 that propose new fills or new sedimentation ponds;
3. Any permit subjected to midterm review on or after 9/30/2000, for which construction has not begun on previously approved fills or ponds at the time of midterm review; and
4. Permit applications that were under review by DSMRE on 9/30/2000 may be issued conditionally, contingent upon submittal within 60 days of a permit revision that incorporates appropriate stream restoration zones into the permit area.

PROCEDURES

1. Stream restoration zones will be processed in essentially the same manner as internal access roads. No certification or profile will be required.
2. Right of entry must be provided.
3. Waivers must be provided for operations within 300 feet of occupied dwellings, and other "lands unsuitable" issues, such as operations within 100 feet of a cemetery, must be addressed.
4. Subject to approval by DSMRE, applicants may determine the required width of the access corridor based upon their own equipment needs and characteristics and site specific conditions. The applicant must justify the proposed width. A cross-section of the stream restoration zone and associated access must be provided.
5. The applicant must provide a narrative that clearly describes the limited uses intended for the stream restoration zone. Discussion of a cleanout and disposal plan must be provided, including a schedule for observing the condition of the stream to determine when cleanout is needed. Access corridors should be left undisturbed, if possible, until cleanout is necessary.
6. Restoration of ephemeral reaches may use the standard approved revegetation plan provided in Item 22 of application form MPA-03. Restoration of riparian vegetation is required for intermittent and perennial streams only.
7. Stream restoration zones cannot be bonded alone. They must be attached to a mining increment, hollowfill increment, pond increment, or some combination thereof.
8. New proposals that overlap areas previously permitted for surface disturbance (whether disturbed or not) must include all stream restoration zones.
9. DSMRE's first letter to the permittee regarding midterm review will ask the permittee to identify fills and ponds that are currently undisturbed. If the permittee identifies areas as undisturbed, and DSMRE deems stream restoration zones necessary for those areas, DSMRE will verify the undisturbed status and require that appropriate stream restoration zones be included in the permit area.

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