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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION

BUREAU OF SURFACE MINING RECLAMATION AND ENFORCEMENT

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COMMISSIONER

FRANKFORT, KENTUCKY 40601

RECLAMATION ADVISORY MEMORANDUM NO. 81-01 #24

TO: BSMRE Division Directors and Regional Administrators
Coal Operator Associations
Coal Operators and Company Engineers
Consulting Engineers

FROM: Elmore C. Grim, Commissioner *E.C.G.*
Bureau of Surface Mining Reclamation and Enforcement

DATE: March 19, 1981

SUBJECT: AOC Variances on Steep Slopes

In the December 17, 1980 Federal Register, OSM published new interim regulations effective January 16, 1981, which make limited AOC variances available for the first time under the federal interim program. This department is therefore making such variances available in Kentucky's interim program pursuant to KRS 350.450(3), and will begin accepting applications for such variances on April 15, 1981. This memorandum sets forth the basic requirements for such variances, and supersedes Reclamation Advisory Memorandum No. 8, December 27, 1978, and attached Engineering Guidelines section 13.4. Supplemental criteria, if necessary, will be provided in future permitting guidelines.

Please note that this variance is available only for operations on steep slopes, and that in all cases the highwall must be eliminated. With these constraints the actual availability of the variance may be severely limited, since elimination of highwalls on steep slopes will normally leave very little flat land.

I. Applicability.

The variance is available only for those operations on steep slopes (slopes of more than 20 degrees) which are not mountaintop removal operations.

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II. Criteria for issuance of variance.

The department will issue, renew or revise a permit to include a variance from the requirement for restoration of affected lands to their approximate original contour only if the department finds, in writing, based upon showings made by the applicant, that all the following criteria are met:

(1) The applicant has demonstrated that the purpose of the variance is to make the lands to be affected within the permit area suitable for an industrial, commercial, residential or public-use postmining land use and that the proposed land use is likely to occur. (Underground mines and coal preparation plants have not been subject to postmining land use requirements under the interim program to date, but will be required to comply with certain postmining land use requirements in order to qualify for this AOC variance.)

(2) The applicant has demonstrated, after consultation with any local land use planning agency with jurisdiction over the permit area, that the proposed postmining land use constitutes an equal or better economic or public use.

(3) The applicant has demonstrated compliance with the requirements for acceptable alternative postmining industrial, commercial, residential or public land uses under 405 KAR 1:070, Section 4, except that third-party letters of commitment will not be required under Section 4(3) and 4(4). The applicant must demonstrate to the department under Section 4(3) that necessary public facilities are likely to be provided, and under Section 4(4) that the plan is financially feasible.

(4) The applicant has demonstrated that the watershed of the area will be improved as compared to the conditions of the watershed before mining. The watershed will be deemed improved only if both (a) and (b) below are met:

(a) 1. There will be a reduction in the amount of total suspended solids or other pollutants discharged to surface or ground waters from the area as compared to such discharge prior to mining;
or

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2. there will be reduced flood hazards or more even flow within the watershed containing the area due to reduction of the peak flow discharges from precipitation events or thaws; or

3. there will be an increase in streamflow during times of the year when the stream is normally at low-flow or dry conditions and such increase in streamflow is determined by the department to be beneficial to public or private users of such streams or to the ecology of such streams.

4. While one or more of the above described parameters of water quality or quantity must be improved, the other parameters must be maintained at their premining levels.

(b) The total volume of flows from the proposed affected lands, during every season of the year, will not vary in a way that adversely affects the ecology of any surface water or any existing or planned use of surface or ground water.

(5) The applicant has demonstrated that the owner of the surface of the lands within the permit area has knowingly requested, in writing, as a part of the application, that a variance be granted. The request shall be made separately from any other surface owner consent given for the operation and shall show that the surface owner understands that the variance could not be granted without the surface owner's request.

(6) The variance proposal is designed and certified by a qualified registered professional engineer in conformance with recognized professional standards and accepted engineering practices to assure the stability, drainage, and site configuration necessary for the intended use of the site.

(7) All requirements of KRS Chapter 350 and the regulations of 405 KAR Chapters 1 and 3, other than the requirement to restore the affected lands to the approximate original contour, will be met by the proposed operations.

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III. Obligations of permittees receiving variances.

Every permittee who obtains a steep-slope AOC variance shall:

- (1) Comply with all terms and conditions of the approved variance.
- (2) Comply with all applicable requirements of KRS Chapter 350 and 405 KAR Chapters 1 and 3.
- (3) Completely backfill the highwall with spoil material in a manner which results in a static factor of safety of at least 1.3 based upon recognized methods of geotechnical analysis.
- (4) Disturb land above the highwall only to the extent the department deems appropriate and approves as necessary to facilitate compliance with the variance provisions. The department may authorize such disturbance above the highwall if it finds the disturbance is necessary to:
 - (a) Blend the solid highwall and the backfilled material;
 - (b) Control surface runoff; or
 - (c) Provide necessary access to the area above the highwall.
- (5) Place off the mine bench no more spoil than necessary to achieve the postmining land use, and shall ensure the stability of spoil retained on the bench. All spoil not retained on the bench shall be placed in accordance with KRS Chapter 350 and 405 KAR Chapters 1 and 3.
- (6) Improve the watershed control of the area in accordance with the demonstration provided under paragraph II (4) above. The permittee shall achieve any specific watershed-improvement criteria approved by the department as terms and conditions of the variance.

Any questions or comments regarding this policy should be directed to the Division of Permits in Frankfort.