

JACKIE SWIGART  
SECRETARY



JOHN Y. BROWN, JR.  
GOVERNOR

COMMONWEALTH OF KENTUCKY  
**DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION**

BUREAU OF SURFACE MINING RECLAMATION AND ENFORCEMENT

ELMORE C. GRIM  
COMMISSIONER

FRANKFORT, KENTUCKY 40601

RECLAMATION ADVISORY MEMORANDUM No. 81-05 #28

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

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

DATE: July 23, 1981

SUBJECT: Elimination of Pre-existing Highwalls.

APPLICABILITY AND EFFECT OF POLICY

This policy memorandum relaxes requirements for elimination of some pre-existing highwalls. Under previous policy all pre-existing highwalls which were affected in any way by later mining or which were used to facilitate later mining (such as face-up areas for underground mines) were required to be completely eliminated. Under this new policy, some pre-existing highwalls need not be completely eliminated. The new policy applies to both surface mining and surface effects of underground mining. This policy does not change the requirements for any new highwalls created by new mining or by additional cuts on existing highwalls. In these cases, the permittee must still completely eliminate the highwalls he creates.

BACKGROUND

Two decisions by the Interior Board of Surface Mining and Reclamation Appeals<sup>1</sup> have caused OSM to change its policy to allow limited elimination of pre-existing highwalls. As a result, this department now has the latitude to amend its policy to provide similar relief to its permittees.

1. Cedar Coal Co. v. OSM (1 IBSMA 145, April 20, 1979); Miami Springs Properties v. OSM (2 IBSMA 399, December 23, 1980).

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A "pre-existing" highwall is one that was created prior to the date the new state law and interim program regulations went into effect. KRS 350.400 describes such applicability as follows:

(1) Except as herein provided, all strip mining operations which commence operations pursuant to a permit issued on or after February 3, 1978, shall comply, and such permits shall contain terms requiring compliance, with the provisions of KRS 350.405 to 350.435 and 350.445....

(2) On and after May 3, 1978, all strip mining operations shall comply with the provisions of KRS 350.405 to 350.435 and 350.445....

Thus, as a general rule, a pre-existing highwall is one which was created prior to May 3, 1978, and a new highwall is one which was created on or after May 3, 1978. However, if the highwall was created between February 3, 1978, and May 3, 1978, as part of an operation which began pursuant to a permit issued on or after February 3, 1978, then the highwall is considered new, not pre-existing.

#### POLICY

Minimum Requirements. These minimum requirements apply to all pre-existing highwalls which are in any way affected by, or used to facilitate, mining operations conducted after May 3, 1978. Additional requirements may be imposed where the department determines that the operations have, or can reasonably be expected to have, an adverse physical impact on the pre-existing highwall.

(1) All available spoil material, including all spoil generated by re-mining and all spoil readily available from previous mining, shall be used to backfill as much of the highwall as possible.

(2) The highwall shall be backfilled to at least four (4) feet above the coal seam.

(3) The backfill shall be stable, with a static factor of safety of at least 1.3 and a slope no steeper than 2 horizontal : 1 vertical (fifty (50) percent).

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(4) Auger holes must be sealed as required in 405 KAR 1:160 Section 2(1) and 1:260, Section 2(2).

(5) Underground mining openings must be sealed in a manner which ensures the long term stability of the backfill.

Adverse physical impact. The department may require that a pre-existing highwall be completely eliminated, partially eliminated beyond the minimum requirements stated above, or stabilized by other methods, if the department determines that the operation has, or can reasonably be expected to have, an adverse physical impact on the highwall. Minor disturbance of the highwall, such as cleanup at the coal seam in order to begin augering operations, will not normally constitute adverse physical impact. However, major sloughing, cracking, and other severe deterioration of the highwall, such that the highwall has or may become physically unstable, are obvious examples of adverse physical impact. When existing or potential adverse impacts are determined, the department will determine the extent to which the highwall must be eliminated by backfilling and grading, or must be stabilized by other methods.

#### PROCEDURES

Determinations of adverse physical impact and of the required extent of highwall elimination or other stabilization will be site specific and will be based upon postmining evaluations by bureau inspectors and technical personnel designated by the Regional Administrator or the Frankfort office. Because adverse physical impacts will often be latent effects which will not have developed at the time of completion of coal extraction, there will be no release of bond for backfilling and grading until at least one year following the completion of the minimum backfilling and grading requirements for the entire permit area. If, at that time, adverse physical impacts have become evident, there will be no release of bond for backfilling and grading until all additional required backfilling and grading and other stabilization measures have been completed.

All new permits involving pre-existing highwalls will contain conditions as necessary to implement this policy. Ongoing operations involving pre-existing highwalls may submit to the appropriate regional office a request for revision of the backfilling and grading plan consistent with this policy.

#### COORDINATION WITH OSM

A similar policy is being carried out by OSM. Since it is essential that permittees not receive conflicting instructions from state and federal authorities, state actions and federal actions must be closely coordinated. To the maximum extent possible, this department's inspections and determinations will be based on joint state/federal field inspections and joint technical evaluations. More detailed procedures will be developed as necessary.