



Kentucky

Department for Surface Mining
Reclamation and Enforcement

Reclamation
Advisory
Memorandum

From: Elmore C. Grim, Commissioner

E.C.G.

Date: September 22, 1983

Subject: Emergency Regulation on Contour Remining on Steep Slopes

RAM# 69

This department has revised the Kentucky permanent program and interim program regulations concerning contour remining operations on steep slopes.

Previously, such remining operations (second cuts) were required to completely eliminate all highwalls which were newly created by the remining, even where the remining would not generate sufficient spoil material to completely eliminate the highwall. In order to remine such areas, operators would have to borrow spoil material from offsite in order to completely eliminate the highwall. As a result of this requirement, many acres of second-cut coal have been passed over because it would not be economically feasible to remine them.

The new state regulations announced today, provide a variance from the requirement to completely eliminate the highwall on contour remining operations on steep slopes. However, the operator must use all reasonably available spoil in the immediate vicinity to eliminate as much of the highwall as is technically practical. Also, a minimum backfill of four feet over the coal seam is still required by the general backfilling and grading regulations.

The new Kentucky regulation, 405 KAR 20:060E, effective on September 19, 1983, is an emergency regulation which revises the current permanent program performance standards on steep slope mining. Below are excerpts of the significant portions of the emergency regulation.

405 KAR 20:060E, Section 3(2)

(2) Permittees shall be granted variances from the approximate original contour requirements and highwall elimination requirements of Section 2(3) where steep slope contour-mining operations affect previously mined areas that were not reclaimed to the standards of KAR, Title 405, and there is no continuing responsibility to reclaim to such standards, and the volume of all reasonably available spoil is demonstrated in writing to the cabinet to be insufficient to completely backfill the highwall; provided, however, that the highwall shall be eliminated to the maximum extent technically practical in accordance with the following criteria.

(a) The backfill shall be designed by a qualified registered professional engineer.

(b) The permittee shall demonstrate to the cabinet that the backfill has a minimum static safety factor for stability of at least 1.3.

(c) All spoil shall be retained on the solid portion of existing or new benches.

(d) All reasonably available spoil shall be used to backfill the area. Reasonably available spoil shall include spoil generated by the mining operation and other spoil located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to the public safety or significant damage to the environment. For this purpose, the permit area shall include all such spoil in the immediate vicinity of the mining operation.

(e) The backfill shall be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long term stability.

(f) Any remnant of the highwall shall be stable and not pose a hazard to the public health and safety or to the environment.

(g) Spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbances will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.

Concurrently with this new permanent program rule change, Secretary Swigart on September 19, 1983 issued an order which conditionally suspends the interim program regulations at 405 KAR 1:230, Section 1(2). This suspension order has the same effect on areas remined under the interim program regulations as the new emergency regulation has on areas remined under the permanent program regulations.

During the development of the new emergency regulation and Secretary Swigart's suspension order, there were some concerns as to how the department could effectively implement certain provisions of the new regulation without being unduly burdensome to operators. In particular, there was concern that an operator might be denied a permit to remine if the department determined there was spoil in the immediate vicinity of the permit area which could be used to backfill the highwall, but the operator did not have and could not reasonably obtain the legal right to enter upon the property where the spoil pile was located and to disturb the spoil. The department has neither the authority nor the intent to force an operator into unreasonable situations in which he will be denied a permit to remine because he cannot obtain legal access to spoil in the immediate vicinity. The new regulation requires that such spoil must be reasonably available, and must be accessible and available for use. The department considers that these criteria properly safeguard the operator.

There also was concern that the department should establish specific distance criteria to define what is the "immediate vicinity." The department could not determine any specific distance limits which would be fair and reasonable in all cases, since so many different site-specific conditions can arise in the field. A distance that is easily within the immediate vicinity and reasonably accessible for a large operator may be excessive for a small operator. These requirements are not intended to force operators to go to excessive lengths to obtain spoil, but rather to simply insure that permit boundaries are not drawn up so as to intentionally avoid including spoil piles which are obviously close at hand, accessible, and available for use in backfilling the highwall. The department expects to work with individual operators on a case by case basis to implement these requirements in a fair and reasonable manner.

The above regulation changes apply only to contour reining operations on steep slopes, and are consistent with the corresponding federal rules now in effect (interim final OSM rules effective December 13, 1982 - 47 FR 51316, November 12, 1982). OSM has just published new final reining rules (48 FR 41720, September 16, 1983) which will become effective on October 17, 1983. The new OSM rules will provide for highwall elimination variances on reining operations other than steep slope contour reining. The department expects to revise the Kentucky regulations in the near future to take advantage of the new federal rules.

Questions regarding this RAM should be directed to the Division of Permits as follows:

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