



COALEX STATE INQUIRY REPORT - 117
June 26, 1989

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TOPIC:

- I. HIGHWALL ELIMINATION: REGULATIONS OF INDIANA, TENNESSEE, WEST VIRGINIA, WYOMING, MONTANA
- II. CONTEMPORANEOUS RECLAMATION: REGULATIONS OF INDIANA, TENNESSEE, WEST VIRGINIA, WYOMING, MONTANA

INQUIRY I:

According to federal law, all highwalls are to be eliminated. What is the policy regarding highwall elimination in the following states: Indiana, Tennessee, West Virginia, Wyoming and Montana?

INQUIRY II:

What is the definition of "contemporaneous reclamation"? How do the five states listed above regulate the timing of reclamation?

SEARCH RESULTS:

Research was performed using the COALEX Library on LEXIS. The retrieved information is discussed below. Copies of federal and state statutes and regulations as well as Office of Surface Mining (OSM) Directives are attached.

FEDERAL STATUTORY AUTHORITY

Statutory authority for the elimination of highwalls is contained in the Surface Mining Control and Reclamation Act of 1977 (SMCRA) at Sec. 515, 30 U.S.C. 1265. Subsection 515(b)(3) requires that all surface coal mining operations backfill, compact and grade "in order to restore the approximate original contour of the land with all highwalls...eliminated..." The definition of "approximate original contour" (AOC) is found in Sec. 701(2).

Subsection 515(b)(16) requires that reclamation occur as "contemporaneously as practicable" with mining operations.



Variations from the requirements to return land to AOC are found in Subsections 515(b)(3), for "thin" and "thick" overburden; 515(e)(2), for variance from steep-slope requirement of 515(d)(2); other 515(e) subsections permit variances from AOC under certain circumstances.

FEDERAL REGULATORY AUTHORITY: EXISTING REGULATIONS

30 CFR 701.5 provides the definition of AOC.

Part 816. Performance Standards for Surface Mining

1. 30 CFR 816.100 requires that reclamation (backfilling, grading, etc.) occur as "contemporaneously as practicable" with mining operations. Criteria for variances from this regulation appear in Sec. 785.18.
2. 30 CFR 816.101. The time and distance requirements for backfilling and grading were deleted May 24, 1983 (48 FR 15411).
3. 30 CFR 816.102 provides general backfilling and grading requirements. (a)(1) requires the restoration of AOC. Variances from AOC are permitted in accordance with Sec. 785.16 [subsection (k)(3)(ii)]. (a)(2) requires the elimination of all highwalls except for small depressions [subsection (h)] and previously mined highwalls [subsection (k)(3)(iii)].
4. 30 CFR 816.104 provides the exception to AOC for thin overburden.
5. 30 CFR 816.105 provides the exception to AOC for thick overburden.
6. 30 CFR 816.106 regulates backfilling and grading of previously mined areas. Sites containing a preexisting highwall are to be eliminated to the "maximum extent technically practical" in accordance with set criteria.
7. 30 CFR 816.107 regulates backfilling and grading of steep slope sites.
8. 30 CFR 816.133(d), in conjunction with 785.16, provide the criteria for variances from restoring AOC for steep slope areas. 816.133(d)(7) requires the highwall to be backfilled with spoil material to achieve a static safety factor of "at least 1.3".

Part 817. Performance Standards for Underground Mining

30 CFR 817.100, 817.102, 817.106, 817.107, and 817.133(d) correspond to the 816 sections above.

FEDERAL REGULATORY AUTHORITY: INITIAL PROGRAM REGULATIONS

Sec. 715.14 Backfilling and grading, part of the general performance standards from the Initial Program Regulations is still in force. Text is attached.

OSM TEMPORARY DIRECTIVE

Subject No. INE-39; Transmittal No. 543 (June 7, 1989). On interim program sites, no enforcement action will be taken where some highwall remains, "but does not exceed six (6) feet or ten percent (10%) of the vertical highwall".

FEDERAL REGULATORY AUTHORITY: PROPOSED REGULATIONS



On October 31, 1988 (53 FR 43970), OSM announced proposed changes to Sec. 785.16, 816.100, 816.101, 816.104, 816.105, 816.133(d)/817.133(d).

1. Sec. 785.16 and 816.133(d)/817.133(d). Only variances from AOC for steep slope operations are permitted.
2. 816.100 and 816.101. OSM proposes to delete the last sentence of 816.100 because it will duplicate a requirement in proposed 816.101(b).
816.101(a) would establish backfilling and grading time and distance schedules for contour mining (60 days or 1,500 linear feet) and area mining (completion within 180 days following coal removal and not more than four spoil ridges behind the pit being worked).
816.101(b) would allow the regulatory authority to establish alternative backfilling and grading schedules, consistent with (a) above.
816.101(c) would establish alternative standards to be incorporated into any backfilling and grading schedule.
816.101(d) would extend the time allowed for backfilling and grading.
3. 816.104 and 816.105 would provide more specific definitions of thin and thick overburden and add performance standards to each section.

LEGISLATIVE HISTORY

FEDERAL CASE LAW

See relevant excerpts from the Preamble to 53 FR 43970 (OCTOBER 31, 1988) and the SIGNIFICANT ISSUE REPORT - 1, both of which are enclosed as attachments.

STATE STATUTES AND REGULATIONS

The cross references between the federal and state regulations are approximate. They originate from two sources: (1) the COALEX Library (as obtained from each state's "Side-by-Side" report) and (2) as a result of the general research.

Absence of a federal-state section match indicates that no relevant state section was identified in the COALEX Library.

FEDERAL REGULATIONS AND CORRESPONDING STATE REGULATIONS

1. INDIANA

The language of the Indiana regulations follows the federal regulatory language.

Federal Section(s)	State Regulation(s)
30 CFR 785.16 Permits incorporating variances from AOC restoration requirements	310 IAC 12-3-97 AOC variance for steep slope mining; Permits
30 CFR 785.18 Variances for delay in	310 IAC 12-3-99 Variances for delay in



contemporaneous reclamation requirements in combined surface and underground mining activities	contemporaneous reclamation requirements in combined surface and underground mining operations
30 CFR 816.100 Contemporaneous reclamation (Surface Mining)	310 IAC 12-5-53 Contemporaneous reclamation
30 CFR 816.101 Backfilling and grading: Time and distance requirements	310 IAC 12-5-54.1 Backfilling and grading; Timing and distance limitations
30 CFR 816.102 Backfilling and grading: General requirements 30 CFR 816.106 Backfilling and grading: Previously mined areas	310 IAC 12-5-55.1 Backfilling and grading; General requirements
30 CFR 816.105 Backfilling and grading: Thick overburden	310 IAC 12-5-57.1 Backfilling and grading; Thick overburden
30 CFR 816.106/30 CFR 817.106 Backfilling and grading: Previously mined areas 30 CFR 816.107/30 CFR 817.107 Backfilling and grading: Steep slopes	310 IAC 12-5-150.1 Steep slopes; Backfilling and grading
30 CFR 817.100 Contemporaneous reclamation (Underground Mining)	310 IAC 12-5-117 Underground mining; Contemporaneous reclamation
30 CFR 817.102 Backfilling and grading: General requirements 30 CFR 817.106 Backfilling and grading: Previously mined areas	310 IAC 12-5-119.1 Underground mining; Backfilling and grading; General requirements

2. TENNESSEE

OSM directly regulates the surface coal mining operations in Tennessee through regulations contained in 30 CFR Part 942 (49 FR 38874, OCTOBER 1, 1984). Listed below are the current relevant Part 942 sections followed by the relevant sections from the original state program.

Federal Section(s)	State Regulation(s)
30 CFR 785 Requirements for permits for special categories of mining	30 CFR 942.785 Requirements for permits for special categories of mining
30 CFR 816 Permanent program performance standards-Surface mining activities	30 CFR 942.816 Performance standards-Surface mining activities (includes Sec. 816.101: Backfilling and grading timing requirements)
30 CFR 817 Permanent Program Performance Standards-Underground mining activities	30 CFR 942.817 Performance standards-Underground mining activities

ORIGINAL STATE PROGRAM

Federal Section(s)	State Regulation(s)
30 CFR 785.16 AOC variances	0400-1-6-.06 Permits incorporating variances



	from AOC restoration requirements for steep slope mining
30 CFR 785.18 Contemporaneous reclamation variances	0400-1-6-.08 Variances for delay in contemporaneous reclamation requirements in combined surface and underground mining operations
30 CFR 785.18 Contemporaneous reclamation variances	0400-1-16-.05 Compliance with variance terms
30 CFR 816.100 Contemporaneous reclamation (Surface Mining)	0400-1-14-.55 Concurrent reclamation
30 CFR 816.101 Backfilling and grading: Time and distance requirements 30 CFR 816.102 General requirements	0400-1-14-.56 Timing of backfilling and grading
30 CFR 816.102 Backfilling and grading: General requirements 30 CFR 816.106 Previously mined areas	0400-1-14-.57 Backfilling and grading: General grading requirements
30 CFR 816.104 Backfilling and grading: Thin overburden	0400-1-14-.59 Backfilling and grading: Thin overburden
30 CFR 816.105 Backfilling and grading: Thick overburden	0400-1-14-.60 Backfilling and grading: Thick overburden
30 CFR 816.107 Backfilling and grading: Steep slopes	0400-1-20-.04 Steep slopes: Performance standards
30 CFR 816.133(d) Postmining land use	0400-1-20-.05 Steep slopes: Limited variances
30 CFR 816.133(d) Postmining land use	0400-1-20-.06 Steep slopes: Multiple seam
30 CFR 817.100 Contemporaneous reclamation (Underground Mining)	0400-1-15-.52 Concurrent reclamation
30 CFR 817.101 Backfilling and grading: Time and distance requirements 30 CFR 817.102 General requirements	0400-1-15-.53 Backfilling and grading: General requirements
30 CFR 817.102 Backfilling and grading: General requirements	0400-1-15-.54 Backfilling and grading: General grading requirements

3. WEST VIRGINIA

West Virginia regulations emphasize drainage control on regraded areas.

OSM recently held a comment period on proposed amendments to the West Virginia program. One proposed amendment concerns augering on previously mined areas. A copy of the Federal Register notice is attached. (54 FR 22783, MAY 26, 1989).

Federal Section(s)	State Regulation(s)
30 CFR 785.16 Variance from AOC restoration 30 CFR 816.107 Backfilling and grading:	6B.07 Performance standards; Method of operation



Steep slopes 30 CFR 816.133(d) Postmining land use	
30 CFR 785.18 Variances for delay in contemporaneous reclamation 30 CFR 816.101 Backfilling and grading: Time and distance requirements 30 CFR 816.102 General requirements 30 CFR 816.106 Previously mined areas	6B.09 Performance standards; Backfilling and regrading [Subsec.(e) = Drainage control]
30 CFR 816.100 Contemporaneous reclamation (Surface Mining) 30 CFR 816.101 Backfilling and grading: Time and distance requirements 30 CFR 816.102 General requirements	8B.09 Performance standards; Backfilling and regrading (Facilities incidental to coal mining) [Subsec.(e) = Drainage control]
30 CFR 816.107 Backfilling and grading: Steep slopes 30 CFR 816.133(d) Postmining land use	8B.07 Performance standards; Method of operation
30 CFR 785.16 Variances from AOC restoration 30 CFR 817.102 Backfilling and grading: General requirements (Underground Mining) 30 CFR 817.107 Steep slopes 30 CFR 817.133(d) Postmining land use	7B.08 Performance standards: Method of operation [Para. (a)(5) = Drainage channels and flumes]
30 CFR 817.100 Contemporaneous reclamation 30 CFR 817.101 Backfilling and grading: Time and distance requirements 30 CFR 817.102 General requirements 30 CFR 817.106 Previously mined areas	7B.11 Performance standards; Backfilling and regrading [Subsec. (g) = Drainage control] E.09 Performance standards; Materials removal [Drainage control measures]

SMCRA	Code of WV
Sec. 515 Environmental Protection Performance Standards	22A-3-12 Underground Coal Mine Safety Laws: General environmental protection performance standards for surface mining; variances 22A-4-13 Underground Coal Mine Safety Laws: (Minerals other than coal) Obligations of the operator [Drainage control] 20-6-8a Natural Resource Laws: Limitation on the issuance of new permits for surface mining 20-6-13a Requirements regarding surface-mined areas where benches do not result



4. WYOMING

Wyoming includes a reference to "drainage patterns" in the definition of AOC.

Federal Section(s)	State Regulation(s)
30 CFR 701.5 Definitions	Chap. I Sec. 2 Authorities and definitions [excerpted]
30 CFR 785.16 Variances from AOC restoration 30 CFR 816.133/30 CFR 817.133 Postmining land use	Chap. IX Sec. 1 Variances for surface coal mining operations; Content of requests
30 CFR 785.16 Variances from AOC restoration 30 CFR 816.133/30 CFR 817.133 Postmining land use	Chap. IX Sec. 3 AOC; Criteria for any variance approved under Sec. 1
30 CFR 785.18 Variances for delay in contemporaneous reclamation	Chap. III Sec. 4 Permits for special categories of surface coal mining; Combined surface and underground mining operations
30 CFR 816.100 Contemporaneous reclamation (Surface Mining) 30 CFR 816.101 Backfilling and grading: Time and distance requirements 30 CFR 816.102 General requirements 30 CFR 816.105 Thick overburden 30 CFR 816.106 Previously mined areas 30 CFR 816.133 Postmining land use	Chap. IV Sec. 2 General environmental protection performance standards
30 CFR 816.101 Backfilling and grading: Time and distance requirements 30 CFR 816.102 General requirements 30 CFR 816.104 Thin overburden 30 CFR 816.105 Thick overburden 30 CFR 816.107 Steep slopes	Chap. IV Sec. 3 Special environmental protection performance standards applicable to surface coal mining and reclamation operations
30 CFR 816.106 Backfilling and grading: Previously mined areas	Chap. V Sec. 7 Remining
30 CFR 817 Permanent Program Performance Standards -Underground Mining Activities	Chap. VII Sec. 2 Environmental protection performance standards applicable to underground mining operations [Refers back to Chap. IV, Sec. 2 & 3]

SMCRA	State Code
Sec. 515 Environmental Protection Performance Standards	35-11-401 Wyoming Environmental Quality Act - Compliance generally; Exceptions 35-11-402 Wyoming Environmental Quality Act -



5. MONTANA

OSM recently held a comment period on proposed amendments to the Montana program, including one amendment on remining. The Federal Register notice is attached. (54 FR 21228, May 17, 1989).

Federal Section(s)	State Regulation(s)
30 CFR 816.101 Backfilling and grading: Time and distance requirements 30 CFR 816.102 General requirements	26.4.501 General backfilling and grading requirements
30 CFR 816.102 Backfilling and grading; General requirements	26.4.515 Highwall reduction
30 CFR 816.102 Backfilling and grading; General requirements	26.4.518 Buffer zones
30 CFR 816.102 General requirements	56.4.512 Box cut spoils
30 CFR 816.105 Backfilling and grading: Thick overburden	26.4.511 Thick overburden
30 CFR 816.133 Postmining land use	26.4.824 Alternate reclamation: Alternate postmining land uses

Federal Section(s)	Mont. Code Ann.
30 CFR 816.100 Contemporaneous reclamation	82-4-231 Montana Strip and Underground Mine Reclamation Act - Submission of and action on reclamation plan
30 CFR 785.16 Variances from AOC restoration 30 CFR 816.100 Contemporaneous reclamation 30 CFR 816.101 Backfilling and grading: Time and distance requirements 30 CFR 816.102 General requirements 30 CFR 816.107 Steep slopes 30 CFR 816.133 Postmining land uses	82-4-232 Montana Strip and Underground Mine Reclamation Act - Area mining required -- bond -- alternative plan

ATTACHMENTS

A. Federal Statutes

1. SMCRA Sec. 515, 30 U.S.C. 1265, Environmental Protection Performance Standards
2. SMCRA Sec. 701(2), 30 U.S.C. 1291, Definitions

B. Federal Regulations

1. 30 CFR 701.5 Definitions
2. 30 CFR Part 785 Requirements for Permits for Special Categories of Mining
 - a. 785.16 Permits incorporating variances from AOC restoration requirements



- b. 785.18 Variances for delay in contemporaneous reclamation requirement in combined surface and underground mining activities
 3. 30 CFR Part 816 Permanent Program Performance Standards - Surface Mining Activities
 - a. 816.100 Contemporaneous reclamation
 - b. 816.102 Backfilling and grading: General requirements
 - c. 816.104 Backfilling and grading: Thin overburden
 - d. 816.105 Backfilling and grading: Thick overburden
 - e. 816.106 Backfilling and grading: Previously mined areas
 - f. 816.107 Backfilling and grading: Steep slopes
 - g. 816.133 Postmining land use
 4. 30 CFR Part 817 Permanent Program Performance Standards - Underground Mining Activities
 - a. 817.100 Contemporaneous reclamation
 - b. 817.102 Backfilling and grading: General requirements
 - c. 817.106 Backfilling and grading: Previously mined areas
 - d. 817.107 Backfilling and grading: Steep slopes
 - e. 817.133 Postmining land use
 5. 30 CFR 715.14 Initial Program Regulations; Backfilling and grading
- C. OSM Directive, Subj. No. INE-39, Transmittal No. 543 (June 7, 1989)**
- D. 53 FR 43970 (October 31, 1988)**
- E. Interstate Mining Compact Significant Issue Report No. One - Elimination of Highwalls**
- F. Indiana Regulations and Statutes**
1. 310 IAC 12-3-97 AOC variance for steep slope mining; permits
 2. 310 IAC 12-3-99 Variances for delay in contemporaneous reclamation requirements in combined surface and underground mining operations
 3. 310 IAC 12-5-53 Contemporaneous reclamation
 4. 310 IAC 12-5-54.1 Backfilling and grading; Timing and distance limitations
 5. 310 IAC 12-5-55.1 Backfilling and grading; General requirements
 6. 310 IAC 12-5-57.1 Backfilling and grading; Thick overburden
 7. 310 IAC 12-5-150.1 Steep slopes; backfilling and grading
 8. 310 IAC 12-5-117 Underground mining; Contemporaneous reclamation
 9. 310 IAC 12-5-119.1 Underground mining; Backfilling and grading; General requirements
- G. Tennessee Regulations and Statutes**
1. 30 CFR 942.785 Requirements for permits for special categories of mining
 2. 30 CFR 942.816 Performance standards - Surface mining activities
 3. 30 CFR 942.817 Performance standards - Underground mining activities
 4. 0400-1-6-.06 Permits incorporating variances from AOC restoration requirements for steep slope mining
 5. 0400-1-6-.08 Variances for delay in contemporaneous reclamation requirements in combined surface and underground mining operations
 6. 0400-1-16-.05 Compliance with variance terms
 7. 0400-1-14-.55 Concurrent reclamation



8. 0400-1-14-.56 Timing of backfilling and grading
9. 0400-1-14-.57 Backfilling and grading; General grading requirements
10. 0400-1-14-.59 Backfilling and grading: Thin overburden
11. 0400-1-14-.60 Backfilling and grading: Thick overburden
12. 0400-1-20-.04 Steep slopes; Performance standards
13. 0400-1-20-.05 Steep slopes; Limited variances
14. 0400-1-20-.06 Steep slopes; Multiple seam
15. 0400-1-15-.52 Concurrent reclamation
16. 0400-1-15-.53 Backfilling and grading: General requirements
17. 0400-1-15-.54 Backfilling and grading: General grading requirements

H. West Virginia Regulations and Statutes

1. 54 FR 22783 (May 26, 1989)
2. 6B.07 Performance standards; Method of operation
3. 6B.09 Performance standards; Backfilling and regrading
4. 8B.09 Performance standards; Backfilling and regrading
5. 8B.07 Performance standards; Method of operation
6. 7B.08 Performance standards; Method of operation
7. 7B.11 Performance standards; Backfilling and regrading
8. E.09 Performance standards; Materials removal
9. W. Va. Code Sec. 22A-3-12 Underground Coal Mine Safety Laws: General environmental protection performance standards for surface mining; Variances
10. W. Va. Code Sec. 22A-4-13 Obligations of the operator
11. W. Va. Code Sec. 20-6-8a Natural Resource Laws: Limitation on the issuance of new permits for surface mining
12. W. Va. Code Sec. 20-6-13a Requirements regarding surface-mined areas where benches do not result

I. Wyoming Regulations and Statutes

1. Chap. I, Sec. 2 Authorities and definitions [excerpted]
2. Chap. IX, Sec. 1 Variances for surface coal mining operations; Content of requests
3. Chap. IX, Sec. 3 AOC; Criteria for any variance approved under Sec. 1
4. Chap. III, Sec. 4 Permits for special categories of surface coal mining; Combined surface and underground mining operations
5. Chap. IV, Sec. 2 General environmental protection performance standards
6. Chap. IV, Sec. 3 Special environmental protection performance standards applicable to surface coal mining and reclamation operations
7. Chap. V, Sec. 7 Remining
8. Chap. VII, Sec. 2 Environmental protection performance standards applicable to underground mining operations
9. Wyo. Stat. Sec. 35-11-401 Wyoming Environmental Quality Act - Compliance generally; exceptions
10. Wyo. Stat. Sec. 35-11-402 Establishment of standards

J. Montana Regulations and Statutes

1. 54 FR 21228 (May 27, 1989)
2. 26.4.501 General backfilling and grading requirements



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U.S. Department of the Interior

3. 26.4.515 Highwall reduction
4. 26.4.518 Buffer zones
5. 56.4.512 Box cut spoils
6. 26.4.511 Thick overburden
7. 26.4.824 Alternate reclamation: Alternate postmining land use
8. Mont. Code Ann. Sec. 82-4-231 Montana Strip and Underground Mine Reclamation Act - Submission of and action on reclamation plan
9. Mont. Code Ann. Sec. 82-4-232 Area mining required -- bond -- alternate plan