



COALEX STATE INQUIRY REPORT - 341

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TOPIC: Approximate original contour (AOC)

INQUIRY: Please survey the other IMCC member states and conduct research on the following issues:

1. What are the other states' definitions of "AOC"?
2. Do the other states have standards for determining AOC, e.g., criteria for establishing when an area "closely resembles the general surface configuration of the land prior to mining" and when it doesn't?
3. What are other states' requirements for variances from AOC and exemptions for mountaintop removal?

SEARCH RESULTS: Research was conducted using prior COALEX Reports, COALEX and other materials available in LEXIS and a telephone survey of selected states.

For the most part, the language and requirements of the state statutes and regulations follow federal SMCRA and regulations. For implementing the rules, states use OSM Directive INE-26 as a guideline. States have also been using several Interior administrative decisions for guidance.

Directive INE-26 and the most persuasive Interior decisions, identified by research and provided by IMCC member states in response to the survey, are listed below. Copies of these items are attached. Several COALEX Reports are also attached. These discuss additional Interior administrative decisions as well as legislative history materials. Copies of these Reports are included without attachments.

Two tables attached to the end of this Report provide a summary of survey results and a list of relevant federal regulations with the cite for the most recent Federal Register notice where those rules are discussed. A listing of the regulatory history of each of these regulations is also provided.



OSM DIRECTIVE, Subject No. INE-26, Transmittal No. 338, "Approximate Original Contour" (Issued 5/26/87).

"The purpose of this directive is to provide policy guidance and procedures for determining whether backfilling and grading have met the requirements of approximate original contour...."

The Background section provides a statement on congressional intent:

"...Congress recognized and acknowledged that there would likely be differences between the premining and postmining topography. Furthermore, the reclamation of any minesite must take into consideration and accommodate site-specific and unique characteristics of the surrounding terrain and postmining land uses. Consequently, AOC determinations must necessarily retain a certain amount of subjectivity and often rely principally on the judgment of the regulatory authority, which has been given the primary responsibility for such decisions under the Act."

The Procedures section provides some specific guidance on such topics as:

(1) The role of permitting: "...the anticipated postmining topography must be determined in the permitting process with typical cross section or contour maps depicting both the premining and anticipated postmining slopes with sufficient clarity and detail to enable a comparison to determine if AOC has been achieved."

(2) Inspection criteria: "Inspectors shall determine whether AOC requirements have been met by applying the following three elements contained in the definition of AOC.

(a) General surface configuration: postmining contours of the reclaimed area should "closely resemble" but need not "exactly match" the premining contours. "...the general terrain should be comparable to the premined terrain".

(b) Drainage: The reclaimed area should blend into and complement the drainage pattern of the surrounding area.

(c) Highwalls and spoil piles: Highwalls, spoil piles, and depressions "shall be eliminated in a manner which blends in with the surrounding terrain."

PETER J. ROSATI, 119 IBLA 219, IBLA 89-228 (1991).

Rosati contended that the disturbed area of Daugherty's mine nearest Rosati's fence line was not restored to AOC "as the contour remaining after backfilling and grading differs from the original contour by more than 3 feet." The Board, citing to the legislative history, determined that there was no requirement to return the disturbed area to the exact premining contour. They noted that "while there was arguably a somewhat significant change in the slope of the mined land immediately adjacent to appellant's fence line, the overall change in the slope across the disturbed area from the fence line was much milder."

CONSOLIDATION COAL CO. v OSM, Docket No. CH 94-6-R (1994).



A citizen's complaint alleged that "Consolidation had constructed a diversion of an intermittent stream which had caused significant change in the contour and land use." The NOV cited Consolidated for the ditch and spoil placement that resulted in slopes that did not achieve AOC.

OSM disagreed with the Illinois Department of Mines and Minerals in the matter of AOC. The Board, citing to OSM Directive INE-26, analyzed Illinois's AOC requirements, how they were implemented with regard to the mined area and ruled that Illinois' determination that AOC had been received was not arbitrary or capricious.

Illinois "employed its customary site-wide standard. In other words, it did not base its decision on whether the Kadolph site looked almost identical post-mining as it had pre-mining. Rather, it compared the pre- and post-mining criteria over the 600 plus acre site."

CO-OP MINING CO. V OSM, Docket No. DV 94-4-R (1994).

Co-Op was cited for failing to use all available material to return disturbed areas to AOC by eliminating highwalls and cuts. The Board ruled that "the preponderance of the evidence shows that there are no highwalls, as that term is defined in the Utah program". In addition, the Board found that the testimony of Co-Op's witnesses was more persuasive than OSM's witnesses. Co-Op's witnesses had knowledge of the original contour of the mined area and could provide greater factual details.

WILLIAM H. PULLEN, JR. et al., 132 IBLA 224, IBLA 92-335 (1995).

Pullen challenged Phase I bond release claiming that the Jackson County Mining Corp. had failed to backfill and grade the mined areas to AOC and remove all of the highwalls. The Interior Board found that the "record established that the premining contours could never be fully restored using the remaining material available to the permittee, especially given the swell' in the replaced overburden and the void left by the removed coal." The Board decision quoted from the ALJ's ruling which said that OSM requires "that the general configuration of the terrain following reclamation be comparable' to the premining terrain" and that while there were "deviations", none was "truly substantial". In addition, the ALJ found that no unreclaimed highwalls existed.

"[O]verall, such limited deviations are not considered violative of the requirement of AOC. Indeed, even with these deviations, the general surface configuration of the land is basically the same before and after mining and reclamation, as required by SMCRA."

MORGAN FARM, INC., 141 IBLA 95, IBLA 94-775 (1997). IN THE MATTER OF: MORGAN FARMS, INC., Maryland Office Of Administrative Hearings Case No. 91-DNR-BOM-049-80 (1992).



Morgan Farms filed a citizen's complaint challenging the release of reclamation bonds covering the Jones Coal Co. permit, alleging that Jones Coal had not returned the mined land to AOC: hills and depressions existed where there had been level land prior to mining. Morgan Farms "concerns included insufficient topsoil, steep slopes, and debris."

The Interior Board cited to the Maryland ALJ's determination that Morgan Farms failed to show that the land had not been reclaimed to AOC, "that there were substantial deviations between premining and postmining contours." The testimony of the permittee's witnesses convinced the Maryland ALJ, and the IBLA, that when the "overall changes" in contour were considered, rather than "changes in specific areas", the "highwalls and spoil piles had been eliminated, adequate drainage attained, and the general topography of the reclaimed land" complimented and blended into the surrounding terrain. The Maryland ALJ's ruling cites to OSM Directive INE-26 and the decisions listed above.

COALEX STATE INQUIRY REPORT - 292, "HIGHWALL ELIMINATION & AOC: BLENDING IN" (1994).

This earlier Report discusses AOC from a similar perspective and includes a number of the documents summarized above. Report - 292 includes additional relevant Interior decisions, OSM directives and two prior Reports:

COALEX STATE INQUIRY REPORT - 16, "APPROXIMATE ORIGINAL CONTOUR" (1984) investigates the legislative history of the phrase.

COALEX STATE INQUIRY REPORT - 56, "APPROXIMATE ORIGINAL CONTOUR" (1985) provides earlier Interior administrative decisions defining AOC.

COALEX STATE INQUIRY REPORT - 190, "VARIANCE FROM AOC FOR PARTIAL MOUNTAINTOP REMOVAL" (1991).

This Report includes some Interior administrative decisions and Federal Register preambles to federal regulations regarding the issue in question.

ATTACHMENTS

- A. Table of Survey Results
- B. Table of Relevant Federal Regulations
- C. Regulatory History
- D. OSM DIRECTIVE, Subject No. INE-26, Transmittal No. 338, "Approximate Original Contour" (Issued 5/26/87).
- E. PETER J. ROSATI, 119 IBLA 219, IBLA 89-228 (1991).
- F. CONSOLIDATION COAL CO. v OSM, Docket No. CH 94-6-R (1994).
- G. CO-OP MINING CO. V OSM, Docket No. DV 94-4-R (1994).



- H. WILLIAM H. PULLEN, JR. et al., 132 IBLA 224, IBLA 92-335 (1995).
- I. MORGAN FARM, INC., 141 IBLA 95, IBLA 94-775 (1997).
- J. IN THE MATTER OF: MORGAN FARMS, INC., Maryland Office Of Administrative Hearings Case No. 91-DNR-BOM-049-80 (1992).
- K. COALEX STATE INQUIRY REPORT - 292, "HIGHWALL ELIMINATION & AOC: BLENDING IN" (1994).
- L. COALEX STATE INQUIRY REPORT - 16, "APPROXIMATE ORIGINAL CONTOUR" (1984).
- M. COALEX STATE INQUIRY REPORT - 56, "APPROXIMATE ORIGINAL CONTOUR" (1985).
- N. COALEX STATE INQUIRY REPORT - 190, "VARIANCE FROM AOC FOR PARTIAL MOUNTAINTOP REMOVAL" (1991).

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SURVEY RESULTS

This comparison of state regulation sections to the federal rules was conducted using the state regulatory program files in the COALEX Library. The material in the state regulatory program files are current through 1991.

DEFINITION OF AOC found at 30 CFR 701.5

The language used to define AOC found in the regulations of these state programs are identical to the language found in the federal rules:	Alabama, Alaska, Arkansas, Colorado, Illinois, Indiana, Iowa, Kentucky, Louisiana, Mississippi, Missouri, Montana, New Mexico, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Virginia
The language used to define AOC for these two states is similar, but not identical to that used in the federal rules:	Maryland, Wyoming

REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING - MOUNTAINTOP REMOVAL, 30 CFR 785.14

The requirements for mountaintop removal for these state programs are substantially the same as the federal requirements:	Alabama, Alaska, Arkansas, Colorado, Illinois, Kentucky, Maryland, New Mexico, Ohio, Oklahoma, Virginia
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**REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING -
VARIANCES FROM AOC FOR STEEP SLOPE MINING, 30 CFR 785.16**

The requirements for variances from AOC for these state programs are substantially the same as the federal requirements:	Alabama, Illinois, Indiana, Iowa, Louisiana, New Mexico, Oklahoma, Pennsylvania, Virginia, West Virginia
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TABLE OF RELEVANT FEDERAL REGULATIONS

REQUIREMENTS FOR PERMITS:

SECTION	HEADER	FEDERAL REGISTER SITE
30 CFR 785.14	Mountaintop Removal Mining	52 FR 39182 (Oct. 20, 1987)
30 CFR 785.15	Steep Slope Mining	51 FR 9006 (Mar. 17, 1986)
30 CFR 785.16	Variations from AOC for Steep Slope Mining	56 FR 65612 (Dec. 17, 1991)

PERFORMANCE STANDARDS:

SECTION	HEADER	FEDERAL REGISTER SITE
30 CFR 816.102	Backfilling & Grading: General Requirements	57 FR 33874 (July 31, 1992)
30 CFR 816.104 30 CFR 816.105	Backfilling & Grading: Thin & Thick Overburden	56 FR 65612 (Dec. 17, 1991)
30 CFR 816.106	Backfilling & Grading: Previously Mined Areas	58 FR 3466 (Jan. 8, 1993)
30 CFR 816.107	Backfilling & Grading: Steep Slopes	48 FR 41719 (Sept. 16, 1983)

[NOTE: 30 CFR Part 826, Operations on Steep Slopes. was removed May 24, 1983 (48 FR 23355).]

See the attached Regulatory History Table of these sections for a complete listing of relevant Federal Register preambles to revisions of these rules.