



COALEX STATE INQUIRY REPORT - 170

February 15, 1991

Karen Rippy, Esquire
Natural Resources and Environmental Protection Cabinet
Department of Law
Capital Plaza Tower, Fifth Floor
Frankfort, Kentucky 40601

TOPIC: DISPOSAL OF COAL PROCESSING WASTE

INQUIRY: A coal company challenged the definition of "coal processing waste" [30 CFR 701.5] and the requirement to place the waste within the permitted area [30 CFR 816.81-816.87]. The company has been using the refuse as a landscaping product. Are there any legislative history materials, federal or state opinions, etc. which discuss the rationale for the rules that regulate the disposal of coal processing waste?

SEARCH RESULTS: Research was conducted using the COALEX Library and other materials available in LEXIS. The Legislative History materials, particularly the Congressional Reports, provided an explanation of "congressional intent" for the need to regulate the disposal of coal processing waste. The explanation was carried over into the preambles to the rules published in the Federal Register. Excerpts from the materials retrieved appear below; copies are attached. A list of the Federal Register notices (the Regulatory History) for the coal processing waste and coal mine waste rules is attached; included are the related rules for the disposal of excess spoil. No relevant decisions were identified.

LEGISLATIVE HISTORY

Surface Mining Control and Reclamation Act of 1974, HR REP No 1072, 93rd Cong, 2nd Sess 79 (1974). [Excerpts]

The goal of the performance standards is the elimination of the most serious environmental degradation caused by coal surface mining.

Surface Mining Control and Reclamation Act of 1974, HR REP No 1072, 93rd Cong, 2nd Sess 107 (1974). [Excerpts]

"Disposal of mine wastes can present significant hazards to the environment, health and safety of the public, and the social setting for the areas affected. Common problems include air pollution from dust and combustion, water pollution from leaching, siltation and erosion. Moreover, mine waste piles can constitute hazards to life and property when used as embankments for water impoundments or move due to inherent instability. In addition, often such piles are unsightly and



aesthetically incompatible with their surroundings.

...

"With respect to surface disposal of mine wastes in dry piles..., H.R. 11500 requires operators to lay down and compact wastes in layers and intersperse appropriate incombustible materials in order to prevent combustion and water pollution through leaching."

Surface Mining Control and Reclamation Act of 1976, HR REP No 218, 95th Cong, 1st Sess 125, 134 (1977). [Excerpts]

"Waste banks are to be revegetated with a diverse and permanent vegetative cover capable of self-regeneration and plant succession and at least equal in extent to the cover of the natural vegetation of the area. Such revegetation should also assure appropriate surface stabilization of the soil in order to meet the hydrology standards of the act."

Also see excerpts from these attached Reports:

Surface Mining Control and Reclamation Act of 1976, HR REP No 218, 95th Cong, 1st Sess 141 (1977).

Surface Mining Control and Reclamation Act of 1976, HR REP No 218, 95th Cong, 1st Sess 174 (1977).

REGULATORY HISTORY

44 FR 30610 (MAY 25, 1979). Final rules for initial regulatory program. [Excerpts]

715.15(a) Disposal of excess spoil: General requirements. Coal waste frequently has properties that contribute to instability and provide concern for the potential for ground and surface water pollution, due to its acid or toxic forming characteristics. "A given coal waste will require special handling, such as mixing in a ratio or in a place with spoil being used in the fill." As a result of these variables, coal waste was excluded from fills in steep areas. "Waste disposal areas designed and constructed specifically to handle coal processing waste, as specified in the regulations, therefore, are justified."

43 FR 41662, 41766 (SEPTEMBER 18, 1978). Proposed rules. [Excerpts]

816.88 Coal processing waste: Return to underground workings. "Prohibition of the use of coal processing waste offsite without the specific approval of the regulatory authority, limits the use of reddog to those areas where it will not affect the health and safety of the public, or degrade the environment, in keeping with Section 102 of the Act."

44 FR 14902 (MARCH 13, 1979). Permanent program final preamble - Final rule. Coal processing waste.



816.81 Coal processing waste banks: General requirements. "Coal waste disposal practices have historically drawn attention because of disastrous slides.... Coal waste must be placed in horizontal layers and compacted to assure stability and reduce the possibility of burning."

816.85 Coal processing waste banks: Construction requirements. "Where the topsoil is thin, nontoxic spoil material can be used to achieve an adequate depth of cover. The Office has decided that the regulations should require a 4-foot cover on coal wastes, unless it can be established by chemical and physical analysis that a thinner layer is adequate on nontoxic material for environmental protection and reclamation.... Covering of graded portions of the coal processing waste disposal area promotes vegetation, seals the fill from percolation of surface runoff, retards airflow to prevent combustion and controls erosion."

Also see attached Section 816.71 Disposal of excess spoil: General requirements.

48 FR 44006 (SEPTEMBER 26, 1983). Final rules. Coal mine waste.

701.5 Definition of "coal processing waste". "Congress intended that special consideration be given to disposal of coal mine waste regardless of whether it is potentially toxic or acid forming. Thus, OSM has continued to require that all coal processing waste be disposed of according to Sections 816.81-816.86. A revision has been made to the requirements for backfilling and grading and disposal of excess spoil to recognize that nontoxic- and nonacid-forming coal mine waste may be disposed of with other spoil material."

816.81 Coal mine waste: General requirements. 816.81(a). "The final rule is revised to require that the coal mine waste be placed in a controlled manner in a disposal area. The proposed rule only required the placement of the waste. The addition of the phrase 'in a controlled manner' in Section 816.81(a) is supported by the legislative history...."

Also see these attached preambles:

51 FR 41952 (NOVEMBER 20, 1986). Final rule; suspension. [Excerpts]

56 FR 65612 (DECEMBER 17, 1991). Final rule. Disposal of coal mine waste.

ATTACHMENTS

- A. REGULATORY HISTORY
- B. Surface Mining Control and Reclamation Act of 1974, HR REP No 1072, 93rd Cong, 2nd Sess 79 (1974). [Excerpts]
- C. Surface Mining Control and Reclamation Act of 1974, HR REP No 1072, 93rd Cong, 2nd Sess 107 (1974). [Excerpts]
- D. Surface Mining Control and Reclamation Act of 1976, HR REP No 218, 95th Cong, 1st Sess 125, 134 (1977). [Excerpts]
- E. Surface Mining Control and Reclamation Act of 1976, HR REP No 218, 95th Cong, 1st Sess 141 (1977). [Excerpts]



- F. Surface Mining Control and Reclamation Act of 1976, HR REP No 218, 95th Cong, 1st Sess 174 (1977). [Excerpts]
- G. 44 FR 30610 (MAY 25, 1979). Final rules for initial regulatory program. [Excerpts]
- H. 43 FR 41662, 41766 (SEPTEMBER 18, 1978). Proposed rules. [Excerpts]
- I. 44 FR 14902 (MARCH 13, 1979). Permanent program final preamble - Final rule. Coal processing waste.
- J. 48 FR 44006 (SEPTEMBER 26, 1983). Final rules. Coal mine waste.
- K. 51 FR 41952 (NOVEMBER 20, 1986). Final rule; suspension. [Excerpts]
- L. 56 FR 65612 (DECEMBER 17, 1991). Final rule. Disposal of coal mine waste.

REGULATORY HISTORY [FINAL RULES]

I. 816/817.81 - 816.817.89: COAL PROCESSING WASTE

- A. 44 FR 14902 (MARCH 13, 1979) Permanent Program Rules
 - o 816.81 Coal processing waste banks: General requirements
 - o 816.82 Coal processing waste banks: Inspection
 - o 816.83 Coal processing waste banks: Water control measures
 - o 816.85 Coal processing waste banks: Construction requirements
 - o 816.86 Coal processing waste: Burning
 - o 816.87 Coal processing waste: Burned waste construction
 - o 816.88 Coal processing waste: Return to underground workings
 - o 816.89 Disposal of non-coal waste
 - o 816.91 Coal processing waste: Dams and embankments
 - o 816.92 Coal processing waste: Dams and embankments: Site preparation
 - o 816.93 Coal processing waste: Dams and embankments: Design and construction

- B. 44 FR 49673 (AUGUST 24, 1979)
 - o 816.81
 - o 816.82
 - o 816.83
 - o 816.85
 - o 816.87
 - o 816.91
 - o 816.92
 - o 816.93

- C. 44 FR 77439 (77454) (DECEMBER 31, 1979). Notice of suspension.
 - o 816.83



- D. 45 FR 8239 (FEBRUARY 6, 1980).
 - o 816.85

- E. 45 FR 44090 (JUNE 30, 1980).
 - o 816.85

- F. 45 FR 54752 (AUGUST 18, 1980).
 - o 816.85

- G. 45 FR 76931 (NOVEMBER 20, 1980).
 - o 816.83 Exemption from underdrain requirement

- H. 45 FR 81526 (DECEMBER 10, 1980). Petition to amend coal processing waste banks regulations

- I. 46 FR 33980 (JUNE 30, 1981).
 - o 816.85

- J. 48 FR 43955 & 44006 (SEPTEMBER 26, 1983).
 - o 816.81 Coal mine waste: general requirements [some of 816.81 moved to 816.83]
 - o 816.82 [moved to 816.81 & 816.83]
 - o 816.83 Coal mine waste: refuse piles
 - o 816.84 Coal mine waste: impounding structures
 - o 816.85 [moved to 816.83]
 - o 816.86 [moved to 816.87]
 - o 816.87 Coal mine waste: burning and burned waste utilization
 - o 816.88 [moved to 816.81]
 - o 816.89 Disposal of noncoal waste
 - o 816.91 [moved to 816.84]
 - o 816.92 [moved to 816.84]
 - o 816.93 [moved to 816.84]



- K. 51 FR 41952 (NOVEMBER 20, 1986). Suspension of portions of rules
 - o 816.81 Coal mine waste: general requirements
 - o 816.83 Coal mine waste: refuse piles
 - o 816.84 Coal mine waste: impounding structures
 - o 816.89 Disposal of noncoal waste

- L. 53 FR 43584 (OCTOBER 27, 1988). Permanent and Temporary Impoundments
 - o 816.84 Coal mine waste: impounding structures

- M. 56 FR 65612 (DECEMBER 17, 1991).
 - o 816.81 Coal mine waste: general requirements
 - o 816.89 Disposal of noncoal waste

II. 816/817.71 - 816.817.73 DISPOSAL OF EXCESS SPOIL

- A. 3/13/79 44 FR 14902 (MARCH 13, 1979).
 - o 816.71 Disposal of excess spoil: General requirements
 - o 816.72 Disposal of excess spoil: Valley fills/head-of-hollow fills
 - o 816.73 Disposal of excess spoil: Durable rock fills

- B. 44 FR 49673 (AUGUST 24, 1979).
 - o 816.71
 - o 816.72
 - o 816.73

- C. 45 FR 25997 (APRIL 16, 1980).
 - o 816.72

- D. 46 FR 37231 (JULY 17, 1981).
 - o 816.71



OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT
U.S. Department of the Interior

E. 48 FR 32909 (JULY 19, 1983).

- o 816.71
- o 816.72
- o 816.73

F. 48 FR 44777 (SEPTEMBER 30, 1983).

- o 816.71
- o 816.73