APPENDIX II.

OSM DIRECTIVE INE-26, APPROXIMATE ORIGINAL CONTOUR

	U· S· DEPARTMENT OF THE INTERIOR OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT DIRECTIVES SYSTEM	Subject Number: INE-26 Transmittal Number: 338 Date: 5/26/87

Subject: Approximate Original Contour

Approval: Ted D. Christensen | Title: Director

1. Purpose. 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 as defined in section 701(2) of the Act, sections 701.5 and 710.5 of the regulations and the corresponding definitions in approved State programs. This guidance may prove particularly important for: interim program sites where the permits lacked the detail and clarity on premining and postmining topography expressed in permanent program permits; isolated or fringe areas not represented by typical cross sections; or for any site where the postmining topography does not exactly match that anticipated in the approved permit.

2. Definitions.

Approximate Original Contour. As defined in section 701(2) of the Act and sections 701.5 and 710.5 of the regulations, approximate original contour (AOC) means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated. Water impoundments may be permitted where the regulatory authority determines that they are in compliance with the implementing regulations corresponding to section 515(b)(8) of the Act.

3. Policy/Procedures.

a. Background. In modifying the phrases "original contour" and "surface configuration", in the definition of AOC with the terms "approximate" and "general", respectively, 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.

b. Policy. Before concluding that any AOC violation has occurred and reshaping of already reclaimed areas is required, evaluations to determine whether AOC has been achieved shall be conducted in accordance with the considerations and procedures below. Site-specific cases where

AOC is difficult to assess within the context of these procedures shall be resolved through consultation with the regulatory authority and the appropriate Assistant Director for Field Operations.

c. Procedures.

(1) Role of Permitting. Because backfilling and grading represents the largest single cost in reclamation and, once completed, is followed by topsoil replacement and revegetation, both the permittee and the regulatory authority need a clear understanding of the final postmining topography prior to mining. The permittee needs this information so that he may determine if mining is profitable and know that once topsoil replacement and revegetation proceeds, additional regrading will not be required. The regulatory authority needs to know in order that the appropriate bond can be set, contemporaneous reclamation standards can be enforced, and environmental disruption and topsoil loss associated with a second regrading can be avoided. Therefore, 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.

Where the postmining topography described in the approved permit lacks sufficient detail or does not closely resemble the general land configuration before mining, a permit modification is required in accordance with the State counterpart of 30 CFR 774.13.

(2) Inspection Criteria. AOC is achieved through a reasonable, but not necessarily exact, rendering of the approved postmining topography. 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. The reclaimed area should closely resemble the general surface configuration of the land prior to mining. This should not be interpreted, however, as requiring that postmining contours exactly match the premining contours or that long uninterrupted premining slopes must result in the same. Rather, the general terrain should be comparable to the premined terrain; that is, if the area was basically level or gently rolling before mining, it should retain these general features after mining. Rolls and dips need not be restored in their original locations and level areas may be increased or terraces created in accordance with the Federal regulations at 30 CFR 816.102(g) or 817.102(g) through formation of shorter, steeper slopes, provided that those slopes are capable of supporting the postmining land use and blend with the surrounding terrain.

(b) Drainage. The test applied to determine if the reclaimed area blends into and complements the drainage pattern of the surrounding area is whether water intercepted within or from the surrounding terrain flows through and from the reclaimed area in an unobstructed and controlled manner.

(c) Highwalls and spoil piles. All highwalls, spoil piles, and depressions, except small depressions needed to retain moisture, shall be eliminated in a manner which blends in with the surrounding terrain. This element should not be interpreted as necessarily requiring spoil from the first cut to be transported to fill the last cut in area mining, provided highwalls are eliminated and both cuts are graded to blend in with the surrounding terrain. (See 42 FR 62643, December 13, 1977; 44 FR 15227, March 13, 1979; and 48 FR 32911, July 19, 1983).

(3) Oversight of State AOC Determinations. Where a permit contains little guidance depicting the postmining topography and backfilling and grading has been completed, as may often be the case with interim program minesites, any earlier guidance on or acceptance of the reclamation by the regulatory authority should be given considerable deference. This is because the regulatory authority has the primary responsibility for interpreting what constitutes AOC at a given minesite and, at the time, the permittee who received such guidance acted reasonably in construing the State's acceptance as assurance that AOC requirements had been met according to the State's counterpart to 30 CFR 715.14 or 816.102, as appropriate, or the permittee would not have proceeded with resoiling and revegetation.

One purpose of oversight is to determine if a decision of the regulatory authority was reasonable and not an abuse of discretion. While a subsequent different AOC opinion of an OSMRE inspector demonstrates the subjectivity inherent in interpreting AOC, it nevertheless serves no useful purpose to substantially redisturb a stabilized and reclaimed minesite when the regulatory authority has exercised its discretion in good faith and remains satisfied that the applicable program standards, including restoration of AOC and postmining land use capability, have been met. Since environmental goals may be frustrated through the additional siltation and further degradation from a second topsoil removal and replacement, regrading, and revegetation, unless one or more of the three principles enumerated above have been clearly violated, the acceptance by the regulatory authority should stand.

4. Reporting Requirements. None.

5. References.

a. 42 FR 62643, December 13, 1977.
b. 44 FR 15227, March 13, 1979.
c. 48 FR 32911, July 19, 1983.

6. Effect on Other Documents.

Supersedes the policy memorandum entitled "Approximate Original Contour" from the Acting Director, dated June 13, 1985.

7. Effective Date. Upon Issuance.

8. Contact. Chief, Branch of Inspection, (202) 343-5384.