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	U·S· DEPARTMENT OF THE INTERIOR OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT DIRECTIVES SYSTEM	Subject Number: REG-30 Transmittal Number: 544 Date: 6/8/89
Subject: Settlement of Backfilled Material Against a Highwall		
Approval:	Title: Director	

1. **Purpose**. This directive establishes the agency's policy on settlement of backfilled material against a highwall during the period between partial and complete bond release.

2. **Summary**. This directive provides guidance and policy on the need for highwall elimination, after release of a phase I bond. The directive also provides for State procedures which are no less stringent than the policies of this directive.

3. **Definition**. None

4. **Policy/Procedures**.

(a) **Background**. Section 515(b)(3) of the Act and section 816.102(a)(2) of the regulations (under Backfilling and grading: general requirements) require the elimination of all highwalls. Section 519(c)(1) of the Act and 800.40(c)(1) of the regulations specify that an operator may have up to 60% of his bond released upon completion of backfilling, regrading, and drainage control. Section 519(c)(3) of the Act and section 800.40(c)(3) of the regulations provide that a bond may be fully released only after the extended liability period for revegetation has expired and all reclamation requirements have been met. An issue arises when settlement occurs between the time of phase 1 and phase 3 bond release, and such settlement leaves some portion of highwall exposed at the termination of the period of extended liability.

(b) **Policy**. When a permittee has received a phase 1 bond release, it is on the basis that he has complied with backfilling and grading requirements. The period of extended liability contained in section 515(b)(20) of the Act is expressly for revegetation and attainment of the postmining land use, as is the 2 year period of extended liability in 30 CFR 715.20 (f)(2) of the regulations. Even in well constructed backfills, some settlement over time should be expected and allowed. Such settlement should be planned for in the permit application and accommodated in the plan for backfilling and regrading. However, subsequent settlement of approved, stabilized, and well revegetated fills that does expose a small portion of highwall generally should not constitute a basis for requiring the

additional disturbance associated with remedial backfilling and grading. However, in situations where the settlement interferes with achievement of the postmining land use, or is associated with slumping or other indications of instability, requiring remedial regrading to correct those problems and eliminate any wall exposed through settlement would be appropriate.

(c) **Procedures**. Field Office Directors are responsible for applying this policy in consultation with State Regulatory Authorities on a case-by-case basis. Any general State guidance which is no less restrictive than this policy should be allowed.

The decision to redisturb a graded and vegetated site would include consideration of the following factors:

1 was the site initially backfilled, compacted, and graded to the approved permit requirements?

2 Is settlement due to consolidation of the backfill material and not sluffing or slumping (instability) of the fill material?

3 Does the settlement interfere with the approved postmining land use?

5. **Reporting Requirements**. None

6. **Effect on Other Documents.** None.

7. **References**.

a. Surface Mining Control and Reclamation Act, Sections 515(b)(3) and 519(c).

b. 30 CFR 816.102, 800.40(c).

c. 30 CFR 700.11(d)(1).

d. 53 FR 44356.

e. Temporary Directive No: 89-06, "Highwall Elimination".

f. Tollage Creek Elkhorn Mining Co., 2 IBSMRA 341, 87 I.D. 570 (1980).

g. River Processing Inc. v. Clark, Civ. No. 83-316 (E.D. KY May 2, 1985).

h. OSMRE v. C-Ann Coal Co., 94 IBLA 14, (9/16/86).

8. **Effective Date**. Upon Issuance.

9. **Contact**. Division of Technical Services, (202) 343-1480.

10. **Keywords**. highwall elimination, approximate original contour, backfilling and grading, compaction, bond release, reclamation liability, reclamation success.

11. **Appendices**. None.