



United States Department of the Interior **RECEIVED**

SOUTHERN DISTRICT OFFICE

OFFICE OF SURFACE MINING
Reclamation and Enforcement
Washington, D.C. 20240

JAN 10 1995

DEPT. OF MINES AND MINERALS
LAND RECLAMATION DIV.

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Scott Schmitz, Supervisor
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DEPT. OF MINES AND MINERALS
LAND RECLAMATION DIV.

Dear Mr. Schmitz:

Thank you for your December 5 letter regarding the conversion of waste impoundments to wetlands. I share your interest in converting more acreage of mined land into wetlands. Just recently the Office of Surface Mining Reclamation and Enforcement (OSM) embarked on an initiative that will encourage and enable operators to construct wetlands as a post-mining land use by providing guidance as to how wetlands can be accomplished under existing OSM provisions.

OSM recognizes that wetlands provide a variety of valuable functions, such as flood control, wildlife habitat, water purification, etc. Moreover, 30 CFR 816.97 clearly states that an operator shall enhance fish and wildlife habitat where practicable, using the best technology currently available. OSM recognizes that the current success of experimental practices converting impounding structures into wetlands stands as a testament to this technology.

Your specific concern lies with the conversion of coal waste impoundments into wetlands and that existing 30 CFR 816/817.84(b)(1) appears to prohibit the establishment of wetlands in these circumstances. The experimental practices completed to date involving the conversion of refuse impoundments to wetlands were considered experimental on the issue of direct planting of refuse in place of covering with nontoxic material. The requirements of paragraph 816.84(b)(1) do not appear to have been an issue in why these projects were considered experimental. This regulatory provision was not intended to require the removal of the coal refuse that was retained behind the impounding structure. Rather, it was intended to ensure that the impounding structure would be breached so that water would flow freely across the reclaimed refuse thus removing the risk of a structural failure threatening life and/or property downstream from an impounding structure that was no longer being maintained. It was not intended to discourage creation of wetlands which may, at

Mr. Scott Schmitz

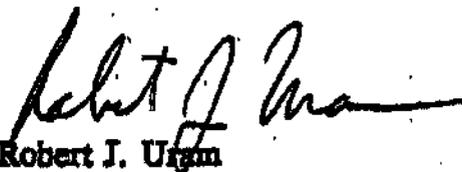
times, involve shallow standing water with no potential for downstream flooding or other safety concerns.

As a part of our current initiative to encourage wetlands as a supplement to existing post-mining land uses, OSM will make clear that such structures may be converted to wetlands under existing regulations provided that any safety concerns have been addressed. That is, if the impounding structure is permanently breached, and the crest of the dam is reduced to the elevation of the refuse surface so that the only water retained is that necessary to saturate the refuse and sustain a wetland ecosystem, Regulatory Authorities need not view this as an impounding structure under 30 CFR 816.84(b)(1)/817.84(b)(1). Rather, it may be considered a wetland constructed for the purpose of enhancing fish and wildlife values at 30 CFR 816.97, thus, supplementing the existing post-mining land use.

In your letter you also mentioned the possibility of a rulemaking. The wetland initiative team carefully researched this issue and concluded that existing regulations do not preclude the interpretation outlined above. Therefore, a rulemaking is not necessary, especially when you take into consideration the clear intention of SMCRA, as embodied elsewhere in the existing regulations, to enhance fish and wildlife habitat.

Again, thank you for your interest in this matter. I hope this provides you with the information you need. As a part of our current wetlands initiative, OSM anticipates providing additional guidance for the construction of wetlands as a supplement to post-mining land uses. If you have any further question with respect to this matter, please contact Vann Weaver at 412-937-2858.

Sincerely,



Robert J. Urgan
Director

cc: Schmitz
Pfleiderer
Spindler
Pinto
DeVardo
Medvick
Holloway ✓
Nolan
O'Leary