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U.S. DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
DIRECTIVES SYSTEM

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Subject: Highwall Elimination on Interim Program Sites

Approval: *[Signature]*

Title: Director

1. PURPOSE. This Directive sets forth procedures for evaluation of highwall elimination performance standards applicable to interim program sites.
2. SUMMARY. This Directive explains under what criteria and conditions certain highwalls on interim program sites will be subject to ten-day notices and enforcement action.
3. DEFINITIONS. None.
4. POLICY/PROCEDURES.

a. Background. On September 22, 1987, the United States District Court for the Eastern District of Kentucky issued a Final Order and Decree approving the terms of a Settlement Agreement between the State of Kentucky and the National Wildlife Federation (NWF v. Miller, No. 86-99). The parties agreed (footnote 3 of the Agreement) that no enforcement action will be taken and bond may be released on interim program sites where:

(1) some highwall remains, but does not exceed six (6) feet or ten percent (10%) of the vertical highwall, whichever is greater; and

(2) that a current stability analysis of the existing backfill demonstrates that the long term stability of the backfill is not adversely affected; and,

(3) all other performance standards are in compliance upon inspection including the requirement that the coal seam be covered with a minimum of four (4) feet of non-acid forming and non-toxic forming material.

On December 22, 1987, the President signed a continuing resolution (P.L. 100-202), Appropriations for Fiscal Year 1988, which specified: "the Secretary of Interior shall abide by and adhere to the terms of the Settlement Agreement in [NWF v. Miller], and not take any actions inconsistent with the provisions of footnote 3 of the Agreement with respect to any State or Federal Program" (emphasis added). This language was repeated in P.L. 100-446, Appropriations for Fiscal Year 1989, which the President signed on September 27, 1988.

Thus, the provisions of footnote 3 of the Settlement Agreement pertaining to highwall elimination on interim program sites are now binding on Office of Surface Mining Reclamation and Enforcement (OSMRE) and have national applicability.

b. Policy.

(1) It is the policy of OSMRE to ensure that ten-day notices or enforcement actions are not issued on interim program mine sites or portions of mine sites where:

(a) backfilling and grading has been completed and revegetation initiated prior to December 22, 1987;

(b) any remaining highwall does not exceed the greater of six (6) feet or ten percent (10%) of the total highwall mined;

(c) all other performance standards are in compliance upon inspection including the requirement that the coal seam be covered with a minimum of four (4) feet of non-acid forming and non-toxic forming material; and,

(d) the permittee is informed of the need for and provides a current stability analysis which demonstrates that the long term stability of the existing backfill and remaining highwall will not be adversely affected. Such stability analysis shall be certified by a registered professional engineer.

(2) In cases where a State regulatory authority has developed specific criteria to determine whether a highwall meets or exceeds the 6 foot/ten percent thresholds described under paragraph 4.b.(1)(b) (e.g., use of a weighted average standard) in order to treat long backfills as a unit, the application of that additional criteria or methodology shall not be deemed as an abuse of discretion provided that it is developed and applied in a reasonable manner. In those States where such criteria or methodology have been developed they will be used to:

(a) evaluate the need for future Federal enforcement actions, and to specify violations and remedial measures for those actions; and

(b) reevaluate existing Federal enforcement actions and, where necessary, to modify the violations and remedial measures stated in those actions.

(3) Where a complete highwall remains in excess of the tolerances or other criteria described above in section 4.b.(1) enforcement actions or ten-day notices are appropriate.

Where one portion of a highwall remains in excess of the tolerances above or the other criteria described above have not been met, enforcement actions or ten-day notices are appropriate for only that portion. For those highwalls or portions of highwalls where enforcement action is necessary, the appropriate remedial action is to require full highwall elimination only for that portion subject to the enforcement action.

c. Procedures.

(1) Issuance of Enforcement Actions and Ten-Day Notices. Field Office Directors shall take appropriate action to issue ten-day notices or, where necessary, appropriate enforcement action on interim program sites where highwalls do not meet the criteria prescribed in section 4.b.

(2) Review of Prior Enforcement Actions. Where OSMRE issued enforcement actions on interim program sites, Field Office Directors are responsible for conducting a preliminary review of a permittee's request for consideration under the above policy and permittee's stability analysis, forwarding the analysis together with a recommendation to the Assistant Director for Field Operations and notifying the permittee of the decision after receipt of the Associate Director for Field Operations response. Field Offices are also responsible for vacating outstanding enforcement actions. Assistant Directors for Field Operations are responsible for conducting the technical review of the stability analysis and approving Field Office recommendations.

(3) Appropriate Responses to Ten-Day Notices. In cases where OSMRE issues a ten day notice alleging that a permittee has not eliminated the remaining highwall, and the State regulatory authority subsequently responds with sufficient information to demonstrate that the criteria specified in section 4.b. has been met, the Field Office Director shall consider the State to have taken appropriate action or shown good cause.

(4) Vacation of Enforcement Actions. When a permittee makes a request for and submits the required stability analysis, the Field Office Director shall conduct a preliminary review and forward the documentation to the Assistant Director for Field Operations for review and approval. Upon approval by the Assistant Director, the Field Office Director shall vacate the enforcement action. If the Assistant Director disapproves the request, the Assistant Director will notify the Field Office Director in writing giving the reasons for denying the permittee's request. The Field Office Director will notify the permittee in writing giving the reasons for the denial.

5. REPORTING REQUIREMENTS. None.

6. EFFECT ON OTHER DOCUMENTS. Supersedes Temporary Directive 89-06, Transmittal Number 517, February 14, 1989.

7. REFERENCES.

a. Settlement Agreement between the State of Kentucky and the National Wildlife Federation (NWF v. Miller, No. 86-99, U.S.D.C., E.KY., September 22, 1987).

b. P.L. 100-446, Appropriations for Fiscal Year 1989.

8. EFFECTIVE DATE. Upon issuance.

9. CONTACT. Chief, Branch of Inspection and Enforcement, FTS 343-4550.

10. KEYWORDS. Highwall, interim program, performance standards.

11. LIST OF APPENDICES. None.