

FEDERAL REGISTER: 45 FR 53183 (August 11, 1980)

DEPARTMENT OF THE INTERIOR

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM)

30 CFR Parts 715, 816 and 817
Performance Standards

ACTION: Proposed rules.

SUMMARY: The Office of Surface Mining is proposing amendments to its general performance standards, its performance standards for surface mining activities, and its performance standards for underground activities. The changes are made to the portion of the regulations that relate to the disposal of excess spoil on benches existing prior to August 3, 1977. The proposed rule would amend the current regulations by allowing controlled gravity transport of excess spoil from an upper bench to a lower bench where the lower highwall meets the upper bench, provided spoil is not placed on the downslope of the lower bench.

DATES: Comments are due on or before September 10, 1980. A public hearing will be held beginning at 9:00 a.m. local time on August 29, 1980.

ADDRESSES: Written comments must be mailed on hand delivered to the Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, N.W., Interior South, Room 153, Washington, D.C. 20240. The public hearing will be held at the Department of the Interior Main Auditorium, 18th and C Street, N.W., Washington, D.C. 20240. Additional comment and hearing information is located below in Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Raymond F. Aufmuth, Physical Scientist, Technical Services Division, Telephone: (202) 343-4264.

SUPPLEMENTARY INFORMATION:

Section 501 of the Surface Mining Control and Reclamation Act ("Act") requires the Secretary to promulgate regulations establishing a regulatory program for surface coal mining operations. Regulations concerning disposal of excess spoil were promulgated on March 13, 1979, 44 FR 15311, (permanent program) and May 25, 1979, 44 FR 30610 (interim program).

This proposed rulemaking addresses questions raised by the Virginia Surface Mining Reclamation Association (VSMRA) concerning the disposal of excess spoil. Specifically, the questions relate to the disposal of excess spoil on pre-existing benches in previously mined steep slope areas.

Prior to passage of the Surface Mining Control and Reclamation Act surface coal mine operators commonly disposed of spoil by pushing it downslope of the bench. In steep slope areas with multiple coal seams, this often resulted in spoil being end-dumped from an active mining bench to a lower pre-existing bench. However, the Act (30 U.S.C. 1265(b)(22)(A)), the interim program regulations (30 CFR 715.15) and the permanent program regulations (30 CFR 816.71(a) and 817.71(a) (1979)) prohibit uncontrolled disposal of excess spoil, in particular disposal of spoil downslope of the active mining bench (30 U.S.C. 1265(d)(1)). The primary reason for the prohibition of uncontrolled end-dumping and disposal of spoil on the downslope is that rock and soil dumped downslope destroy existing vegetation and cause erosion, slides and increased sedimentation of streams. Therefore, the regulations currently allow end-dumping only in limited situations (durable rockfills) under specific environmental constraints (30 CFR 715.15(d), 816.74 and 817.74 and (1979)).

The general questions raised by VSMRA concern the disposal of excess spoil material on lower, pre-existing benches on previously mined steep slopes. VSMRA raises several issues that are discussed below:

a. THE DISPOSAL OF EXCESS SPOIL ON PRE-EXISTING BENCHES:

This practice is addressed in both the interim and final regulations (30 CFR 715.15, 816.71, 817.71 and 826.16) and is permitted, provided the operator adheres to certain requirements. A legislative rule to allow disposal of excess spoil on natural benches provided backfilling and grading requirements are met has been proposed. 45 FR 32331 (May 16, 1980).

b. DOWNSLOPE TRANSPORT OF EXCESS SPOIL:

Two situations have been considered here. The first is gravity-induced downslope movement ("gravity transport") of excess spoil where there is a distinct natural slope between the two benches in question. This practice was discussed at length during the drafting of both the Act and regulations and is prohibited by both, which require that excess spoil be "placed in a controlled manner" (30 U.S.C. 1265(b)(22)(A) and 30 CFR 715.15, 816.71 and 817.71) and which prohibit disposal of spoil on the downslope. For this reason, the OSM has decided not to allow gravity transport of excess spoil where there is a distinct natural slope between an actively mined upper bench and existing lower bench. OSM, however, has recognized the potential utility of gravity transport systems under certain conditions (see below) and has authorized an experimental practice utilizing "spoil lanes" where there is a distinct natural slope between the two.

The second situation is gravity transport of excess spoil where the highwall of the lower bench meets the upper bench such that there is no natural slope between the two. It is the prohibition of this practice that VSMRA is specifically questioning.

The preamble to the final permanent program regulations, at 44 FR 15203, 3rd column, March 13, 1979, cites legislative history indicating that excess spoil must be transported by vehicle, not be end-dumping or gravity transport, to its ultimate storing place. However, in that context the legislative history (123 Cong. Rec. H-7584, July 21, 1977) shows that Congress was primarily concerned with uncontrolled disposal of spoil on the downslope and approved of disposal of excess spoil on pre-existing benches:

The surplus spoil disposal standards do not allow the dumping or pushing of spoil downslope of the bench. These standards require controlled placement of the spoil. Spoil must be transported -- hauled by truck or other vehicle -- placed and compacted at the exact location of its permanent disposal. This controlled placement concept is essential to the long term stability of spoil. . . . Suitable disposal areas must be found. It would seem that solid portions of old mine benches would be most suitable since they would offer the best foundation for stability.

OSM recognized in the preamble to the final permanent program regulations, at 44 FR 15203, 2nd column, March 13, 1979, "the constructive and beneficial results for disposal of excess spoil in such workings and excavations [as pre-existing benches], and strongly encourages this practice." In addition, one of the main purposes of the Act is to "promote the reclamation of mined areas left without adequate reclamation." 30 U.S.C. 1202(h). Therefore, OSM believes that Congress intended to prohibit uncontrolled gravity transport of spoil, especially where it resulted in placement of spoil on down slopes. Controlled gravity transport of excess spoil that protects against disposal of spoil on the downslope and leads to reclamation of preexisting benches would be consistent with Congressional intent.

After review and investigation of this method of excess spoil disposal and discussion with industry and State regulatory authorities, OSM is proposing a rule that will permit the gravity transport of excess spoil from an active upper bench to the pre-existing solid portion of a lower bench where the highwall of the lower bench meets the upper bench. The allowance of this practice should benefit operators by saving fuel, labor and capital costs involved in vehicular transport of excess spoil to disposal sites. At the same time, it should promote reclamation of pre-existing mined benches that otherwise would not be reclaimed. This practice will only be permitted on a site specific basis and must meet certain environmental standards in addition to those already in the regulations. Since the practice will be permitted only where no natural slope exists between the two benches and only upon the condition, among others, that no spoil moves to the downslope of the lower bench, the proposed rule does not authorize disposal of spoil on downslopes.

The proposed legislative rule would function as follows with respect to surface coal mining operations:

Gravity transport of excess spoil from an upper actively mined bench to a lower pre-existing bench will be permitted on a site specific basis provided:

- (1) The highwall of the lower bench intersects (meets) the upper actively mined bench with no natural slope between them.
- (2) Only spoil in excess of that necessary to eliminate the highwall and return the upper actively mined bench to the approximate original contour may be placed on the solid portion of the lower bench.
- (3) Gravity transport points are determined on a site specific basis. It is anticipated that there will be specific points along the upper bench at which gravity transport will occur. Although uncommon, continuous gravity transport could occur along extended lengths of the upper bench where there is a short highwall on the lower bench. The limiting of gravity transport points will provide for equipment operator safety on the lower bench, ensure, environmental protection of the downslope below the lower bench and provide ease in rehandling of the excess spoil.
- (4) The excess spoil is placed only on solid portions of the lower pre-existing bench.
- (5) The excess spoil on the solid portion of the lower bench is rehandled and placed in a controlled manner to eliminate as much of the lower highwall as practicable. Rehandling and placing of the excess spoil on the solid portion of the lower bench is

necessary to provide for revegetation and long-term stability, and should consist of placing the excess spoil in horizontal lifts in a controlled manner, concurrent compacting as necessary to ensure mass stability and prevent mass movement, and covering and grading to allow surface and subsurface drainage to be compatible with the natural surroundings and ensure a long term static safety factor of 1.3.

(6) A safety berm is constructed on the lower bench of sufficient height and width and length to prevent any spoil from moving over the bench to the downslope following end-dumping. Movement of excess spoil over the immediate lower bench either downslope or to another bench would be a violation of 30 CFR 826.12(a)(i).

The safety berm must be removed by the operator during final grading operations.

(7) The area of the lower bench used to facilitate the disposal of excess spoil shall be considered an affected area and as such is subject to all requirements of the regulations, including, but not limited to, topsoil handling, hydrologic, revegetation and coal processing wastes requirements.

The proposed legislative rule would function as above with respect to surface activities resulting from underground coal mining operations with the following exceptions:

(1) Consistent with the distinct differences between surface and underground coal mining operations, underground development waste as well as spoil not required to achieve approximate original contour may be placed on the lower solid bench;

(2) The gravity transport method may be conducted from a bench from which a portal is constructed for underground mining operations.

The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14. The Department of the Interior has also determined that the adoption of this rule does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969. These determinations are available in the Administrative Record. The Act provides that issuance of regulations as part of the interim regulatory process shall not constitute a major Federal action within the meaning of the Section 102(2)(c) of the National Environmental Policy Act, 30 USC Section 1251(a). Therefore only the impacts of amendments to the permanent regulatory program were analyzed.

SUMMARY

Part 715 -- 30 CFR 715.15(a) is proposed to be amended by adding a paragraph at the conclusion of the section permitting gravity transport of excess spoil in certain situations.

Part 816 -- 30 CFR 816.71 is proposed to be amended by adding a paragraph at the conclusion of the section permitting gravity transport of excess spoil in certain situations.

Part 817 -- 30 CFR 817.71 is proposed to be amended by adding a paragraph at the conclusion of the section permitting gravity transport of underground development waste and excess spoil in certain situations.

PROPOSED AMENDMENT

Part 715 -- 30 CFR 715.15(a) is proposed to be amended as follows:

PART 715 -- GENERAL PERFORMANCE STANDARDS

SECTION 715.15(a) -- DISPOSAL OF EXCESS SPOIL: GENERAL REQUIREMENTS

(1)-(14) * * *

(15) Disposal of excess spoil from an upper actively mined bench to a lower pre-existing bench by means of gravity transport is permitted provided that:

(A) The operator receives the prior written approval of the regulatory authority; and

(B) The following conditions and performance standards in addition to the Environmental Performance Standards of this part are met:

(i) The highwall of the lower bench intersects (meets) the upper actively mined bench with no natural slope between them;

(ii) Only spoil in excess of that necessary to eliminate the highwall and return the upper actively mined bench to the approximate original contour may be placed on the lower solid bench;

(iii) The gravity transport points are determined on a site specific basis by the regulatory authority; to minimize hazards to health and safety and to ensure that damage will be minimized should spoil accidentally move downslope of the lower bench;

(iv) The excess spoil is placed only on solid portions of the lower pre-existing bench;

(v) All excess spoil on the lower solid bench, including that spoil immediately below the gravity transport points, is rehandled and placed in a controlled manner to eliminate as much of the lower highwall as practicable. Rehandling and placing the excess spoil on the lower solid bench shall consist of placing the excess spoil in horizontal lifts in a controlled manner, concurrently compacting as necessary to ensure mass stability and prevent mass movement and covering and grading to allow surface and subsurface drainage to be compatible with the natural surroundings and ensure a long term static safety factor of 1.3.

(vi) A safety berm is constructed on the lower bench of sufficient height, width and length to prevent any spoil from moving over the lower bench to the downslope following end-dumping (movement of excess spoil over the immediate lower bench either downslope or to another bench would be a violation of 30 CFR 716.2(a)(1)) and the safety berm is removed by the operator during final grading operations;

(vii) The area of the lower bench used to facilitate the disposal of excess spoil is considered an affected area and, as such, is subject to all requirements of the regulations, including, but not limited to, topsoil handling, hydrologic, revegetation and coal processing wastes requirements.

Part 816 -- 30 CFR 816.71 is proposed to be amended as follows:

PART 816: PERMANENT PROGRAM PERFORMANCE STANDARDS: SURFACE MINING ACTIVITIES

SECTION 816.71 -- DISPOSAL OF EXCESS SPOIL: GENERAL REQUIREMENTS

(a)-(n) * * *

(o) Disposal of excess spoil from an upper actively mined bench to a lower pre-existing bench by means of gravity transport is permitted provided that:

(1) the operator receives the approval of the regulatory authority; and

(2) the following conditions and performance standards in addition to the Environmental Performance Standards of this part are met:

(A) the highwall of the lower bench intersects (meets) the upper actively mined bench with no natural slope between them;

(B) only spoil in excess of that necessary to eliminate the highwall and return the upper actively mined bench to the approximate original contour may be placed on the lower solid bench;

(C) the gravity transport points are determined on a site specific basis by the regulatory authority to minimize hazards to health and safety and ensure that damage will be minimized should spoil accidentally move downslope of the lower bench.

(D) the excess spoil is placed only on the solid portions of the lower pre-existing bench;

(E) all excess spoil on the lower solid bench, including that spoil immediately below the gravity transport points, is rehandled and placed in a controlled manner to eliminate as much of the lower highwall as practicable. Rehandling and placing the excess spoil on the lower solid bench shall consist of placing the excess spoil in horizontal lifts in a controlled manner, concurrent compacting as necessary to ensure mass stability and prevent mass movement and covering and grading to allow surface and subsurface drainage to be compatible with the natural surroundings and ensure a long term static safety factor of 1.3.

(F) a safety berm is constructed on the lower bench of sufficient height, width and length to prevent spoil from moving over the lower bench to the downslope following end-dumping (movement of excess spoil over the immediate lower bench either downslope or to another bench would be a violation of 30 CFR 826.12(a)(i)) and the safety berm is removed by the operator during final grading operations;

(G) the area of the lower bench used to facilitate the disposal of excess spoil is considered an affected area and, as such, to be is subject to all requirements of the regulations, including, but not limited to, topsoil handling, hydrologic, revegetation and coal processing wastes requirements.

Part 817 -- 30 CFR 817.71 is proposed to be amended as follows:

PART 817: PERMANENT PROGRAM PERFORMANCE STANDARDS: SURFACE MINING ACTIVITIES

**SECTION 817.71 -- DISPOSAL OF UNDERGROUND DEVELOPMENT WASTE AND EXCESS SPOIL:
GENERAL REQUIREMENTS**

(a)-(n) * * *

(o) Disposal of underground development waste and excess spoil from a bench from which a portal has been constructed to a lower pre-existing bench by means of gravity transport is permitted provided that:

(1) The operator receives the approval of the regulatory authority; and

(2) The following conditions and performance standards in addition to the Environmental Performance Standards of this part are met:

(A) The highwall of the lower bench intersects (meets) the upper bench from which a portal has been constructed with no natural slope between them;

(B) Only underground development waste and spoil in excess of that necessary to eliminate the highwall and return the upper bench to the approximate original contour may be placed on the lower solid bench;

(C) The gravity transport points are determined on a site specific basis by the regulatory authority to minimize hazards to health and safety and insure that damage will be minimized should spoil accidentally move downslope of the lower solid bench.

(D) The underground development waste and excess spoil is placed only on solid portions of the lower pre-existing bench;

(E) All underground development waste and excess spoil on the lower solid bench, including that spoil immediately below the gravity transport points, is rehandled and placed in a controlled manner to eliminate as much of the lower highwall as practicable. Rehandling and placing the excess material on the lower solid bench shall consist of placing the excess material in horizontal lifts in a controlled manner, concurrently compacting as necessary to ensure mass stability and prevent mass movement and covering and grading to allow surface and subsurface drainage to be compatible with the natural surroundings and ensure a long term static safety factor of 1.3.

(F) A safety berm is constructed on the lower bench of sufficient height, width and length to prevent any material from moving over the lower bench to the downslope following end-dumping (movement of spoil over the immediate lower bench either downslope or to another bench would be a violation of 30 CFR 826.12(a)(i)) and the safety berm is removed by the operator during final grading operations;

(G) The area of the lower bench used to facilitate the disposal of underground development waste and excess spoil is considered an affected area and, as such, to be is subject to all requirements of the regulations, including, but not limited to, topsoil handling, hydrologic, revegetation and coal processing waste requirements.

Hearing and Comment Procedures

The hearing site was selected on the basis of its proximity to the mining area most likely to be impacted by the proposed rule change.

Individual testimony at this hearing will be limited to 15 minutes. The hearing will be transcribed. Submission of written statements in advance of the hearing would greatly assist OSM officials who will attend the hearing. Advance submissions will give these officials an opportunity to consider appropriate questions that could be asked to clarify the statement of, or to request more specific information from, the person testifying. Persons seeking further information or wishing to speak at the hearing should contact Raymond E. Aufmuth at (202) 343-4022. Persons wishing to speak who have not contacted Mr. Aufmuth will be heard following the scheduled speakers. Written and oral comments should be as specific as possible. OSM will appreciate any and all comments. The most useful comments, however, are those that are supported by discussion of the Act, the legislative history and pertinent technical literature.

Dated: August 1, 1980.

Charles P. Eddy,
Acting Assistant Secretary, Energy and Minerals.

ENVIRONMENTAL ASSESSMENT

The proposed action would amend the interim and permanent regulatory program of the Surface Mining Control and Reclamation Act of 1977 ("Act"). The Act provides that issuance of regulations as part of the interim regulatory program shall not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act. 30 USC Section 1251(a). Therefore, only the impacts of amendments to the permanent regulatory program will be analyzed. The proposed regulations would apply to remining operations and would permit gravity transport of material from one bench to another, provided the highwall of the lower bench intersects the upper bench. The permanent program regulations were published at 44 FR 15312 *et seq.* (March 13, 1979). A programmatic environmental impact statement (OSM-EIS-1) was prepared which addressed the environmental impact of the permanent regulatory program.

This EA analyzes the proposed regulations to determine if any significant effects on the human environment result. The environmental impacts of an alternative is also analyzed.

Proposed Action

OSM proposes to amend the permanent regulatory program to include regulations applicable to remining operations permitting gravity transport of material from an upper bench to an existing lower bench. Use of this method would be restricted to situations where the highwall of the existing lower bench intersects the upper bench. The proposed regulations would include provisions requiring construction of a berm on the lower bench to prevent spoil movement off the bench and rehandling of the material on the lower bench to assure stability.

Gravity transport methods are not directly analyzed in the programmatic EIS, but the general subject of spoil disposal, of which gravity transport is one method, is analyzed at BIII-11-14. The existing regulations require backfilling and grading mined land to restore the approximate original contour (AOC), including the elimination of highwalls, and prohibit disposal of spoil on the downslope. The present regulations apply to mining operations after passage of the Act. The proposed regulations would apply to remining operations where an operator makes a new bench cut above benches existing prior to the date of the Act. The operator is not required to reclaim those existing benches. The proposed rules would encourage reclamation of existing benches by allowing the operator to gravity dump the excess spoil from an upper bench on to a lower existing bench under certain circumstances.

ALTERNATIVES

1. No action.
2. Amend the regulations to allow gravity transport of material from an upper bench to a lower existing bench.

DISCUSSION OF ALTERNATIVES

1. No action. The alternative of taking no action will result in application of the regulations as they are now promulgated. The environmental impacts of this alternative have been adequately addressed in the Environmental Impact Statement developed for the permanent program regulations, primarily at B-III-11-12, 39-41 and 60-61 (Final Environmental Impact Statement, OSM-EIS-1).

As analyzed in the programmatic EIS, the impacts of the current regulations are primarily beneficial, consisting of improved postmining productive capacity and soil quality, reduction in disturbed area for fills and minimization of contributions of sediment and dissolved solids to the prevailing hydrologic system.

2. Amend the regulations to allow controlled gravity transport of material from an upper actively mined bench to an existing lower bench. This alternative would preserve the beneficial impacts of the present regulations, since the requirement to build a berm would prevent soil movement off the bench and prevent contributions of sediment to the hydrologic system, while spoil rehandling requirements, including compaction and regrading, would assure stability of the bench and decrease the erosivity of the material to prevent additional contributions of sediment and dissolved solids to the hydrologic system. Additional significant benefits are the elimination of orphaned highwalls and benches in areas of remining.

FINDING OF NO SIGNIFICANT IMPACT

The environmental assessment prepared by OSM identifies environmental impacts that would occur as a result of a proposed rule modification to the permanent regulatory program. A previous environmental impact statement (OSM-EIS-1) was prepared which identified and discussed the impact of that program. In particular, the impacts of the proposed regulations and alternatives within the scope of the programmatic EIS.

The environmental impacts of the proposed rule modification are minimal in degree and their individual and cumulative impacts would not be significant.

Based on the discussion of impacts in the environmental assessment, I have concluded that the proposed rulemaking will result in no significant impact on the human environment not already identified and discussed in the programmatic environmental impact statement and that another environmental impact statement is therefore not required.

Dated: July 29, 1980.

Walter N. Heine,
Director, Office of Surface Mining.

Approved:

Dated: August 1, 1980.

Charles P. Eddy,
Acting Assistant Secretary, Energy and Minerals.

DETERMINATION OF SIGNIFICANCE FOR PROPOSED RULE ON GRAVITY TRANSPORT METHOD

The Office of Surface Mining (OSM) proposes to amend the internal and permanent regulatory program to include a regulation to permit gravity transport of material from an upper bench to an existing lower bench. Use of this method would be limited to situations where the highwall of the lower existing bench and the upper bench intersect. Use of this method would not be allowed on the downslope.

I have concluded, based on a review of the criteria for determining significance, that the proposed rule will not be significant and does not require the preparation of a regulatory analysis.

CRITERIA FOR SIGNIFICANCE

1. *The proposed rule will not have a major and national or regionwide impact on State or local governments.* 43 CFR 14.3(c)(1).

The proposed rule will have no effect on interstate relations, relations between State and local governments, internal organizations of State and local governments, personnel practices of State and local governments, the role and functions of heads of State and local governments, or eligibility criteria for Federal financial assistance. The amending of the regulations will result in additional work for the operator and the regulatory authority in terms of the permit application and reclamation plan. The operator will have to identify the disposal method, berm construction, etc. which will have to be reviewed by the RA. However, this will be generally offset because the operator will not have to permit additional area for a fill, nor will he have to have this fill structure designed and certified. The RA will not have to review the fill design which generally will be more complex than disposal on a bench. For these reasons, this proposed amendment will not have a major impact on State or local governments.

2. *The proposed rule will impose no major new recordkeeping or reporting requirements on individuals, businesses, organizations or State or local governments.* 43 CFR 14.4(c)(2).

The proposed rule does not impose any new recordkeeping or reporting requirements because it does not impact the recordkeeping portions of the regulatory program.

3. *The proposed rule does not constitute a major Federal action for which an environmental impact statement is required.* 43 CFR 14.3(c)(3).

An environmental assessment has been prepared which found that the proposed rule will not have a significant effect on the quality of the human environment so as to require the preparation of an environmental impact statement. The environmental assessment is on file in the administrative record for this rulemaking.

4. *The proposed rule would not have a major impact on other programs of the Department, other Federal agencies or the allocation of Federal funds.* 45 CFR 14.3(c)(4). The proposed rulemaking does not involve allocation of Federal funds by the Office of Surface Mining.

The proposed rule affects only the programs of the Office of Surface Mining and does not affect other Federal agencies or impact on the allocation of Federal funds.

5. *The proposed rule is not likely to have a substantial economic effect on the entire economy or on an individual region, industry or level of government.* 43 CFR 14.3(c)(5).

The proposed rule does not make any substantial change in the present regulatory program. The economic impact on coal operators would be reduced as the rule may provide a cheaper method of moving excess spoil material from one bench to

another. However, the number of operations impacted is small since this type of operation may only occur in re-mining of areas mined prior to August 3, 1977.

Dated: July 29, 1980.

Walter N. Heine,
Director, Office of Surface Mining.

Approved:

Dated: August 1, 1980.

Charles P. Eddy,
Acting Assistant Secretary, Energy and Minerals.

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