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DEPARTMENT OF THE INTERIOR

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

30 CFR Parts 700, 701, 785, 816, 817, and 827

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program;  
Support Facilities and Coal Preparation Plants

ACTION: Final rule.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) is amending its regulations applicable to support facilities and coal preparation plants. New definitions of surface coal mining operations, coal preparation or coal processing, coal preparation plants, and support facilities are adopted. The revised regulations: (1) Establish a single set of regulations applicable to all coal preparation plants, (2) clarify rules applicable to support facilities and utility installations, and (3) clarify the applicability of OSM's regulations to coal preparation plants and support facilities. These rule changes are necessary in order to clarify OSM's jurisdiction and to establish a clear set of regulatory requirements.

EFFECTIVE DATE: June 6, 1983.

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**SUPPLEMENTARY INFORMATION:**

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- II. Discussion of Responses to Comments and Rules Adopted
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**I. BACKGROUND**

The Surface Mining Control and Reclamation Act of 1977, *30 U.S.C. 1201* et seq. (the Act) sets forth general regulatory requirements governing surface coal mining operations and the surface impacts of underground coal mining. OSM has by regulation implemented or clarified many of the general requirements of the Act and set performance standards to be achieved by different operations. See 30 CFR Part 700 et seq.

One area of ambiguity under the Act has been OSM's jurisdiction over certain operations related to coal mines. Initially, OSM adopted a definition of the term "surface coal mining operations" only slightly different from the statutory definition. However, that definition left intact a statutory ambiguity with regard to OSM's jurisdiction over certain coal-mine-related activities. These final rules are intended to clarify OSM's jurisdiction, to set out clearer and simpler performance standards, and to specify permitting requirements for these facilities.

The rules adopted herein were proposed on June 25, 1982 (*47 FR 27688*). Because of an error in printing, portions of the proposed rule were published on June 29, 1982 (*47 FR 28359*). The comment period opened on June 25, 1982, and continued until August 25, 1982. It was reopened until September 10, 1982, to allow the admission into the record of comments received at congressional hearings on September 9-10, 1982.

**II. DISCUSSION OF RESPONSES TO COMMENTS AND RULES ADOPTED**

**A. CHANGES TO THE DEFINITION OF "SURFACE COAL MINING OPERATIONS"**

Section 701(28) of the Act defines "surface coal mining operations" as follows:

(A) Activities conducted on the surface of lands in connection with a surface coal mine or subject to the requirements of section 516 surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation

for the purpose of obtaining coal including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the uses of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce at or near the mine site: Provided, however, that such activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 2/3 per centum of the tonnage of minerals removed for purposes of commercial use or sale or coal explorations subject to section 512 of this Act; and

(B) The areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incidents to such activities. [Emphasis added.]

The definition thus includes not only activities conducted on the surface of land in connection with a surface coal mine or an underground mine with surface effects, but also the areas upon which such activities occur or disturb the natural land surface.

Through the use of examples, the statutory definition offers some guidance as to the scope of activities included in the definition. It is unclear from the syntax alone, however, whether the phrase "at or near the mine site" at the end of the examples in Paragraph (A), modifies only the phrase immediately preceding it, i.e., "loading of coal for interstate commerce," or whether it also modifies "the cleaning, concentrating or other processing or preparation."

The definition of a "surface coal mining operation" in Section 701(28) of the Act therefore is subject to two differing interpretations: (1) That cleaning, concentrating, other processing or preparation and loading of coal must be both "in connection with" a surface coal mine and "at or near the mine site" to be regulated; or (2) that such activities, other than the loading of coal, are regulated if they are in connection with a mine, without regard to proximity to the mine.

In interpreting the initial regulatory program, which adopted in Section 700.5 the statutory definition of surface coal mining operations almost directly from the Act, the Interior Board of Surface Mining and Reclamation Appeals (the Board) generally applied the first test and required proximity as well as connection to a mine. See *Western Engineering*, 1 IBSMA 202 (1979); *Reitz Coal Co.*, 3 IBSMA 260 (1981); *Thoroughfare Coal Co.*, 2 IBSMA 72 (1981); *The Hoke Co.*, 2 IBSMA 7 (1981); *Falcon Coal Co.*, 2 IBSMA 406 (1980); *Wolverine Coal Corp.*, 2 IBSMA 325 (1980); *Roberts Bros. Coal Co.*, 2 IBSMA 284 (1980). This interpretation, however, was due at least in part to the ambiguity of the definition, and the Board's unwillingness to resolve the ambiguity against operators who could not infer from the regulatory language that their facility was to be regulated.

In the development of the regulations for the permanent regulatory program, OSM attempted to clarify its intent to exercise the most complete jurisdiction available by applying the phrase "at or near the mine site" only to the "loading of coal for interstate commerce." OSM included preamble language clarifying the applicability of the phrase. (See 44 FR 14914-15 and 14928, March 13, 1979.)

However, since the OSM interpretation was contained only in the preamble to the permanent program regulations and not in the regulation itself, the ambiguity was not fully resolved, and the Board continued to apply the "at or near" test to all the above-listed activities. U.S. District Judge Flannery, on the other hand, in *In re: Permanent Surface Mining Regulation Litigation*, Civil Action No. 79-1144 (Slip op. at 51-53), (D.D.C., May 16, 1980), upheld the OSM interpretation and found that the "at or near" language only modified "the loading of coal." Judge Flannery also recognized that Section 701(28)(B) of the Act provided a second, and independent, basis for OSM's jurisdiction over offsite facilities and processing plants (id. at 52-53).<sup>n 1</sup> More recently, another district court overturned the decision of the Interior Board of Surface Mining Appeals that OSM had no jurisdiction over a coal processing facility because it was not at or near the mine site. *Debord v. Watt*, No. 82-99. (E.D. Ky., Sept. 29, 1982) reversing *Dinco Coal Sales, Inc.*, 4 IBSMA 35 (Mar. 26, 1982). Also see *Shawnee Coal Co. v. Andrus*, 661 F2d 1083 (6th Cir. 1981).

<sup>n 1</sup> In its February 1, 1983 order remanding the case to the district court, the U.S. Court of Appeals required OSM to consider all issues raised in the briefs of the parties, Civ. No. 80-1810 (D.C. Cir.). This preamble addresses those issues.

The definition adopted today is substantially the same as the one proposed. Under the definition adopted, "surface coal mining operations" means --

(a) Activities conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of Section 516 of the Act, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining; the uses of explosives and blasting; in-situ distillation, retorting, leaching, or other chemical or physical processing; and the cleaning, concentrating, or other processing or preparation of coal. Such activities also include the loading of coal for interstate commerce at or near the mine site. These activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed 16 2/3 percent of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to Section 512 of the Act; and provided further, that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles; and

(b) The areas upon which the activities described in Paragraph (a) of this definition occur or where such activities disturb the natural land surface. These areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities and for haulage and excavation, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or material on the surface resulting from or incident to those activities.

As noted in the preamble to the March 13, 1979, rules, a clarification has been made of the statutory definition: Extraction of coal from coal refuse piles has been stated in an express provision in addition to the activities listed in the Act. The reasons for this provision are set out in the preamble to the March 13, 1979, rules at *44 FR 14917*.

In addition, OSM has amended the punctuation slightly, and separated the phrase "loading of coal for interstate commerce at or near the mine site" in order to clearly reflect OSM's interpretation that the phrase "at or near the mine site" modifies only "loading of coal for interstate commerce" and does not modify "cleaning, concentrating, or other processing or preparation" or any other part of the definition.

Thus, the following distinct types of activities are included within the meaning of the term surface coal mining operations:

- Contour mining;
- Strip mining;
- Auger mining;
- Mountaintop mining;
- Box cut mining;
- Open pit mining;
- Area mining;
- Use of explosives and blasting in relation to coal mining;
- In-situ distillation, retorting, leaching, or other chemical or physical processing;
- Cleaning, concentrating or other processing or preparation of coal;
- Loading of coal for interstate commerce at or near the mine site; and
- Extraction of coal from coal refuse piles.

OSM believes the phrase in Section 701(28)(A) of the Act and 30 CFR 700.5 "in connection with" should be interpreted broadly. Some examples of that relationship include facilities which receive a significant portion of their coal from a mine; facilities which receive a significant portion of the output from a mine; facilities which have an economic relationship with a mine; or any other type of integration that exists between a facility and a mine. A facility need not be owned by a mine owner to be in connection with a mine.

OSM does not believe that its jurisdiction extends to facilities which are operated solely in connection with the end user of the coal product. A facility will not be deemed to be operated in connection with a mine if it is located at the point of

ultimate coal use unless it is also located at the site of the mine. OSM will treat all facilities which handle coal as either "in connection with" a mine or "in connection with" an end user.

In addition, OSM recognizes that Section 701(28)(B) of the Act (and the identical portion of the definition in 30 CFR 700.5(b) as adopted) provides a supporting basis for regulating certain areas. These areas include those on which the activities identified in Paragraph (A) of the definition occur or where they disturb the natural land surface, as well as those areas on which other activities take place if the use of these areas results from or is "incident to" the specified activities. It is from this portion of the statutory definition that OSM derives its authority to regulate support facilities.

Commenters were concerned that the proposed phrase "in connection with" was ambiguous with regard to an "independent contract coal handler." Generally, an independent handler or other person would function "in connection with" a coal mine if he or she is associated with a mine in any of the ways described above.

Commenters asserted that OSM could not change the statutory definition of "surface coal mining operations" by adopting a regulation. Rather, they observed, OSM should propose such a change to Congress.

In adopting these regulatory amendments OSM is not changing the statutory definition. Through several years of regulation using a regulatory definition nearly identical to the statutory one, OSM identified the ambiguities which prompt the regulatory changes adopted today. OSM is attempting to resolve those ambiguities by interpreting the statutory definition through regulation. These interpretations are consistent with the statutory definition.

Some commenters supported the proposal to put the phrase "loading of coal for interstate commerce at or near the mine site" in a separate sentence. Other commenters opposed OSM's proposal to apply the modifier "at or near the mine site" only to the "loading of coal" and not to other listed activities. These commenters felt either that the regulatory definition should be adopted exactly as the statutory definition or that language should be adopted which reflected that the "at or near" test should apply to cleaning, concentrating, processing, or preparation facilities, as well as to loading facilities. Commenters felt that the statutory language was insufficient to allow OSM to adopt rules which would require States to regulate offsite facilities. Some commenters relied upon the language in Senate Report 95-128, 95th Cong., 1st Sess. (1977) for support of this position. Others referenced several decisions of the Board of Surface Mining Appeals.

OSM disagrees with such comments. Both the Senate and House Reports which accompany the Act are consistent with the interpretation adopted, which applies the "at or near" test only to loading facilities. OSM believes that the statutory language and accompanying legislative reports establish that the test applies only to loading facilities. Accordingly, it would be impermissible to narrow OSM's jurisdiction by applying that test to other activities listed in the statutory language. Furthermore, as noted earlier, Judge Flannery in *In re: Permanent Surface Mining Regulation Litigation*, interpreted the phrase "at or near the mine site" as modifying only "the loading of coal." *Id.*; accord, *Debord v. Watt*, *supra*; and *Shawnee Coal Co. v. Andrus*, *supra*; but see *Drummond Coal Co. v. Watt*, n2 Civ. No. CV-80-M-0829-S (N.D. Ala., April 20, 1982).

n2 Drummond, however, was only interpreting OSM's regulations under the initial regulatory program.

Commenters suggested that it was unnecessary for OSM to exercise its jurisdiction over offsite facilities because these facilities have historically been regulated by State zoning laws and more recently some have been regulated under the Federal Water Pollution Control Act, as Amended, 33 U.S.C. 1857 et seq., or by the Clean Air Act, 42 U.S.C. 7401 et seq.

In enacting the Act, Congress intended to establish a comprehensive statute to regulate surface impacts of coal mining, including offsite processing facilities and certain support facilities. Although some facilities may be regulated by several laws, each governing different facets of the operation, this is consistent with congressional intent.

Some commenters recommended that OSM delete from its regulatory definition the second proviso at the end of paragraph (a) of the definition, which deals with the extraction of coal from coal refuse piles because the regulation would more closely track the statutory language if it were deleted. OSM has decided to retain this language. OSM did not propose to amend this portion of the definition which is authorized under the Act. It is important to list this activity in order to clearly delineate OSM's jurisdiction. As noted earlier, a discussion of this issue was included in the preamble to the March 13, 1979, rules (44 FR 14917).

Commenters suggested replacing the words "incidental to" in paragraph (b) of the definition with "related to" and rewording the end of the last sentence of Paragraph (b) in order to connote the requirement for close physical proximity to the coal mine. OSM agrees that the Act implies a proximate relationship between a regulated facility and regulated support facilities. OSM does not agree that substitution of the words "related to" for "incident to" is warranted. The language at the end of the second sentence of paragraph (b) includes the term "incident to." In this context, the "incident to" phrase defines the relationship which must exist in order for the lands and activities thereupon to be regulated. In response to the commenters' concern, however, the final rule adds language to the definition of support facility indicating that the phrase "resulting from or incident to" connotes an element of proximity.

OSM had proposed to delete the word "surface" from the phrase "surface coal mining operations" in order to clarify that OSM regulates many aspects of coal mines that are not on the surface, or related to surface mines. Many commenters opposed such a change, some suggesting that it would be illegal, and others saying that it would detract from the usefulness of the definition. These commenters felt that the change would not help to clarify the perceived ambiguity. In response to these comments, OSM has adopted the definition with the word "surface" retained. OSM intends to continue to exercise jurisdiction over both surface mines and the surface effects of underground mining and certain activities related to both surface and underground mines. A corresponding change has been included in the definition of support facilities.

## **B. NEW DEFINITIONS OF "COAL PROCESSING" AND "COAL PREPARATION PLANT"**

OSM proposed a new definition of the term "coal processing" and a revised definition of the term "coal processing plants" in 30 CFR 701.5 which would limit these definitions to plants which process coal by separating it from its impurities. The rule has been adopted substantially as proposed, with the exception that the term "coal preparation plant" is used instead of "coal processing plant" to follow more closely definitions used by the Environmental Protection Agency (EPA) in recent amendments to 40 CFR 434.11 (*47 FR 45382*, October 13, 1982). The definition of "coal processing" has been revised to define also the term "coal preparation" to reflect the common usage and identical meaning of both "coal processing" and "coal preparation."

"Coal preparation" or "coal processing" has been defined to mean the cleaning, concentrating, or other processing or preparation of coal in order to separate coal from its impurities. Under this definition, coal loading, crushing, sizing and other such activities do not constitute coal processing or preparation unless they result in the separation of coal from its impurities. By clarifying that coal processing includes only those activities where coal is separated from its impurities, the definition provides for the regulation of those activities most likely to be associated with the potential for adverse environmental impacts on the surface.

The definition of coal preparation plant has been revised to parallel the definitions of "coal processing" and "coal preparation." The phrase "coal preparation plant" is defined to mean those facilities where coal is subject to cleaning, concentrating, or other processing or preparation in order to separate coal from its impurities. The rule provides a noninclusive listing of some of the types of facilities that are expected to be included within the overall scope of a coal preparation plant and associated areas. Individually, many of the described facilities would not necessarily constitute a coal preparation plant, because some of these facilities might not be used in connection with the cleaning, concentrating, or other processing or preparation of coal to separate coal from its impurities. Loading and crushing facilities would be considered part of a coal preparation plant when conducted in conjunction with coal preparation operations. The listed examples are not intended to be exhaustive.

OSM received many comments on this part of the proposal. Some commenters supported the amendments, others did not.

Commenters were concerned about OSM's proposal to limit the definitions to those facilities where "run of the mine coal" is processed. These commenters noted that the term should include the extraction of coal from gob or slurry piles as well as the processing or preparation of run-of-the-mine coal. OSM agrees. Under the definition adopted, any separation of coal from its impurities must be construed as coal processing. A corresponding change has been made to the definition of coal preparation plant.

Commenters suggested that the definition of coal preparation plant (as well as the definition of support facilities) include the requirements that it be "substantially and operationally connected with the mining operations" and be operated "such that the mine operator has or could have control of the facilities." OSM has not adopted the suggestion. A plant which separates coal from its impurities is a coal preparation plant without regard to its relationship to a mine. Under the Act, OSM must regulate those coal preparation plants which are operated in connection with a coal mine. OSM has not adopted either the phrase "substantially and operationally connected" or "such that the mine operator has or could have control of the facilities" because it believes it would be impermissibly limiting its jurisdiction and avoiding OSM's statutory responsibility. A plant may be operated in connection with a mine without the mine operator having any control over it.

Commenters suggested deleting some of the proposed examples of the types of facilities included in the definition of coal preparation plant. Specifically, the commenters recommended deletion of roads, railroads, surface conveyer systems, chutes, aerial tramways, or other transportation facilities. These commenters suggested that OSM did not have jurisdiction over the transportation facilities associated with preparation plants. Other commenters noted that those transportation facilities regulated by OSM's previous 30 CFR 816.180 and 817.180 were proposed to be amended by two rulemakings, the proposals governing coal preparation plants and governing roads.

In the final definition of coal preparation plant, OSM has not adopted the proposed examples listed, but not for the reason suggested. Although those transportation facilities which are operated as part of or incident to coal preparation plants will be governed by the rules for preparation plants, such transportation facilities, when operated independently of preparation plants, are correctly the subject of other performance standards. Therefore, they have been deleted from the definition of coal preparation plant and will be included in final rules for support facilities (see below) and roads.

Some commenters felt that the proposed definition of coal processing, which included any separation of coal from its impurities, was too inclusive because it included screening operations which produce only small quantities of waste materials. These commenters felt that such operations should not be regulated. Other commenters felt that the proposed amendments were inappropriate because facilities should be regulated without regard to whether they produce a waste product. They noted that some environmental problems result from crushing and sizing operations that do not involve the separation of coal from waste products. Some commenters suggested that OSM's proposed definition turned the phrase "cleaning, concentrating, or other processing or preparation" in the statutory definition into a string of words with identical meanings.

OSM disagrees with these comments. The first paragraph of the definition of surface coal mining operations (discussed more fully above) establishes by the use of examples several categories of activities which are regulated. The first category is coal excavation operations for which several examples are listed; the second is the use of explosives and blasting. The third category lists a series of methods of utilizing coal in situ: distillation, retorting, leaching, or other chemical or physical processing. Each of these is one method of using coal in situ. Congress could have eliminated the apparent redundancy by saying "any" in situ utilization of coal. Similarly, when the statute lists "cleaning, concentrating or other processing or preparation," Congress set forth various means of separating coal from its impurities. OSM believes Congress intended to encompass the entire range of activities for removing the impurities from coal. However, there is no reason to believe that Congress intended to reach those activities which only had the effect of separating large pieces of coal from smaller ones or to remove small quantities of rock material that may otherwise cause damage to a crusher or sizer. Indeed, by its omission OSM believes that Congress specifically excluded mere crushing and sizing.

Accordingly, by its definition of coal preparation, OSM intends to reach only those activities that actually clean, concentrate, process, or prepare coal; that is, operations which separate coal from its impurities.

Commenters expressed concern that OSM's revised definition of coal processing plant would have the effect of reading the phrases "physical processing" and "or other processing or preparation" out of the definition of surface coal mining operations. Commenters pointed out that OSM's proposed definition of coal processing plant conflicts with its prior interpretation of the statutory definition of surface coal mining operations in that screening and crushing operations, at one time believed to be included in the statutory language, would not be regulated under the new rules.

OSM has not ignored the statutory phrases. As explained above, OSM has read these phrases in the fuller context in which they appear. Thus, while the phrases "physical processing" and "other processing or preparation" do appear in the statutory language, they are not intended to stand on their own. The words "physical processing" appear at the end of the

phrase "in situ distillation or retorting, leaching or other chemical or physical processing." They are modified by "in situ" and provide language parallel and equivalent to "retorting" or "leaching." OSM believes that Congress included these in order to demonstrate that retorting, leaching, or any other chemical or physical processing when conducted in situ would be a surface coal mining operation. Similarly, the phrase "other processing or preparation" must also be read in the context of the listed operations immediately preceding it.

Commenters pointed out that OSM's proposed definition of the term "coal processing plant" would not be entirely consistent with the EPA definition of the term "coal preparation plant" or its definition of the term "coal processing and conveying equipment."

EPA may adopt definitions that vary from those adopted by OSM because the EPA derives its jurisdiction from statutes other than the Act. OSM's jurisdiction in this regard is limited to "cleaning, concentrating, or other processing or preparation" of coal, and it has defined its terms accordingly. However, the commenter is incorrect in asserting that OSM's and EPA's definitions differ substantively in this regard. See EPA's definition at *47 FR 45382*, October 13, 1982. The final OSM rule has been revised to include terminology similar to that used by EPA to avoid confusion between the two sets of rules.

Commenters were concerned that the proposed change would allow activities with significant water, air, or noise pollution impacts to go unregulated. In enacting the legislation, and setting OSM's jurisdiction, Congress specifically identified activities and areas to be regulated. OSM agrees that in some circumstances crushing and screening operations may have adverse water, air, and noise impacts. However, as commenters noted, these may be subject to the jurisdiction of other agencies such as EPA. A discussion of environmental impacts related to these revisions and reasonable alternatives is included in OSM's recently issued "Final Environmental Impact Statement OSM-EIS-1: Supplement."

Commenters called OSM's attention to two Federal court cases which they apparently felt compelled the interpretation that coal crushing and screening operations were included within the definition of surface coal mining operations. In one, *Shawnee Coal Co. v. Andrus, supra*, the court held that a tippie operator was precluded from seeking judicial relief from a Notice of Violation without exhausting available administrative remedies. In addressing the issue of OSM's jurisdiction over tippie operations, the court noted that the Act encompassed offsite tippie operations. Presumably, it is to that portion of the court's opinion which the commenters refer. In the *Shawnee Coal* case, the court was determining whether OSM's asserted jurisdiction was "so conspicuously lacking" as to constitute a usurpation of power. In determining that it was not a usurpation, the court determined that OSM is properly the first judge of its jurisdiction. In *In Re: Permanent Surface Mining Regulation Litigation, supra*, Judge Flannery determined that the phrase "at or near the mine site" does not apply to activities beyond the loading of coal. Judge Flannery did not, however, discuss what activities are included in the phrase "cleaning, concentrating or other processing or preparation."

A more recent case also relates to this issue. In *Debord v. Watt, supra*, the court determined that OSM could not avoid jurisdiction over a plant that crushed and loaded coal because it was not at or near the mine site. There, as in the two other cases, the court did not address the issue of whether the activity was in fact coal processing or preparation.

### **C. NEW DEFINITION OF SUPPORT FACILITIES**

OSM is adopting a new definition of the term "support facilities" in 30 CFR 701.5 much like the one proposed.

"Support facilities" is defined to mean those facilities resulting from, or incident to, surface coal mining operations and the areas upon which such facilities are located. Support facilities may consist of, but need not be limited to, the following facilities: mine buildings; bath houses; coal loading facilities; coal crushing and sizing facilities; coal storage facilities; equipment and storage facilities; fan buildings; hoist buildings; sheds, shops, and other buildings; water treatment and water-storage facilities; and railroads, surface conveyor systems, chutes, aerial tramways, or other transportation facilities, but not including roads.

The new definition clarifies the types of facilities regulated under Sections 816.180 and 817.180, which contain the performance standards applicable to support facilities. It also specifically incorporates a proximity element.

Commenters objected to OSM's proposal to include other transportation facilities, such as railroads, conveyers, chutes, and aerial tramways, in the definition of support facilities. Some noted that these same facilities (which were formerly

regulated under Sections 816.180 and 817.180) were the subject of another rulemaking (*47 FR 16592*, April 16, 1982). Other commenters did not like the proposal because it would have required the consent of the owner of certain types of facilities before the disruption of those facilities by transportation facilities. OSM has decided to continue to include railroads, conveyers, chutes, aerial tramways, and other transportation facilities in the definition of support facilities, but not to include roads which are subject to regulation under other sections and are covered in another rulemaking. OSM considered regulating these support facilities under the regulation for roads but has decided that it is more logical to apply the support facilities standards rather than the more specialized road standards.

Commenters suggested that OSM should not adopt a definition of support facilities because those facilities are included within the definition of surface coal mining operations. These commenters felt that to the extent that clarification is necessary, it should be left to the States. OSM has adopted the proposed regulatory definition to clarify which regulations are applicable to different types of operations.

Commenters suggested that OSM did not have jurisdiction over some of the activities listed, such as bath houses and mine buildings, because they were not listed in Section 701(28)(A) of the Act. OSM's regulatory jurisdiction extends to "any adjacent land, the use of which is incidental to" any activity listed in Section 701(28)(A), as well as to "other areas upon which are sited structures, facilities, or other property or materials on the surface resulting from or incident to such activities." It is on these bases that OSM relies for its jurisdiction over support facilities.

Some commenters were confused by OSM's treatment of coal loading facilities. They observed that coal loading facilities were specifically listed as regulated activities under the Act, but that OSM had included coal loading as an activity in the proposed definitions of coal processing plant and support facilities. OSM's regulation of these facilities is neither unintentional nor duplicative. When a loading plant is operated at or near a coal mine, it will be regulated under the permit for that mine. Statutory authority for this situation is provided in Sections 701(28)(A) and 701(28)(B) of the Act. In that context, it will be subject to the same performance standards as other support facilities. When not at or near a mine, a coal loading facility will only be regulated if it is part of results from or is incident to a regulated coal preparation plant or other regulated activity under Section 701(28)(A). Coal loading plants at coal preparation plant sites will be regulated under the permit requirements of Section 785.21 and the performance standards of 30 CFR Part 827.

Commenters suggested that phrase "coal loading facilities," in the definition of support facilities should be modified by the addition of the phrase "at or near the mine site" to reinforce the fact that coal loading has a geographical limitation. This comment has been rejected. Although Section 701(28)(A) of the Act provides an independent basis for regulating loading facilities at or near the mine site, Section 701(28)(B) also provides authority for regulating such facilities. However, to be regulated under Section 701(28)(B) a facility must result from or be incident to an activity regulated under Section 701(28)(A). Thus, regulated support facilities will naturally occur in proximity to the site of a Section 701(28)(A) operation.

Other commenters suggested that language be changed in the definition of support facilities to indicate more clearly that support facilities would not be regulated unless they were "at or near the mine site." While OSM recognizes that in fact all support facilities which OSM regulates are located in proximity to a surface mining and reclamation operation, OSM declines to adopt the suggested language. OSM believes its language "resulting from or incident to" accurately reflects its authority.

The final regulations leave the case-by-case determination of the limitations of the applicability of the support facilities regulation to the individual regulatory authorities. Some commenters were concerned that this flexibility would be confusing and leave too much ambiguity in the regulations. OSM recognizes the desire to provide clear guidance in the regulations but feels that providing flexibility to the regulatory authorities will allow them to consider the myriad site specific situations that cannot be fully anticipated in writing a Federal regulation. To help clarify the definition, however, the final rule specifies that facilities regulated as support facilities will be those in proximity to a regulated activity. Although a proximity relationship is not specifically referenced in Section 701(28)(B) of the Act, it is a logical and practical means of implementing the statutory standard. Regulated support facilities, then, will encompass those facilities that are identified as "resulting from or incident to" a regulated activity by their proximity and relation to the mining operation. Under this interpretation, the proximity to the regulated activity is a guiding principle for applicability of the regulation.



Facilities included within the scope of the applicability of this section would be determined by the regulatory authority based upon the guidance contained in the individual State program and that provided by this final regulation. As an example, OSM would interpret the regulation to include all facilities located up to the point of loadout of coal for interstate transport. For coal transported by rail line, this would extend to the loadout facility located at or near the mine site from which run of mine coal is conveyed or trucked to the rail line and loaded. For operations that use road transportation, this would include all facilities located up to public roads beyond the boundary of the affected area.

OSM believes that the general principle discussed above could be extended in most situations to evaluate whether a facility was located such that it should be considered to be resulting from or incident to a mining operation. Thus, it would be anticipated that similar principles could be applied to such facilities as barge loadouts, conveyor loadouts directly to power plants, and other such facilities.

Commenters were also concerned because, under their reading of OSM's proposal, OSM had proposed to treat crushing and sizing activities in the same category as the loading of coal. These commenters misunderstand the thrust of OSM's proposal. Under the new rules, crushing and sizing operations are not considered loading facilities. However, because the statutory bases for jurisdiction are similar, they will be regulated in like situations. Crushing and sizing operations will be regulated in the context of the operation with which they are associated. Because crushing and sizing operations do not necessarily involve the cleaning, concentrating, or other processing or preparation of coal, they are not regulated unless they can be classified as a support facility resulting from or incident to a regulated activity or as part of a regulated activity, such as a loading operation at or near a mine site or a coal preparation plant.

Commenters suggested that OSM define the term "loading facilities" and include in that definition crushing and sizing facilities. OSM has elected not to define loading facilities, because it believes that the meaning is self-evident. As described above, OSM recognizes that loading facilities may include crushing and sizing operations, but that not all crushing and sizing operations are part of loading facilities.

All regulated support facilities must be permitted. Generally, support facilities will be permitted under the permit for the mine or preparation plant with which they are connected.

Commenters suggested adding language which would clarify that support facilities would be regulated when they are associated with a coal preparation plant as well as with a mine. OSM believes that additional regulatory language is not necessary. Where support facilities are incidental to a particular mine, they will be subject to the performance standards in Sections 816.181 and 817.181. In other situations, a support facility may be part of a regulated coal preparation plant. These operations would be regulated under the permitting requirements of Section 785.21 and the performance standards of Part 827.

Commenters were concerned about OSM's proposal to include as support facilities water-treatment and water-storage facilities, particularly those facilities subject to regulation under Section 816.49 or Section 817.49. OSM did not intend to apply its support facilities regulations to impoundments or sedimentation ponds for which separate performance standards exist. The regulation is intended to reach only treatment and storage facilities used for water preparation for mine consumption. Appropriate clarifying language has been added to the regulation.

Commenters suggested that in Section 701(28)(B) of the Act the statutory language "other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities" does not provide sufficient basis for a proximity test for support facilities. Some commenters felt that a proximity test was undesirable. Others felt that the proposed definition was confusing in this regard. In Section 701(28)(B), the words "other areas" in the last clause are modified by, among other words, "resulting from or incident to [mining] activities." OSM believes that such modification implies a proximity test since areas which result from or are incident to activities must be near those activities. To emphasize this requirement, OSM has modified the final definition of support facilities to use the statutory phrase "resulting from or incident to."

Commenters noted that OSM used the term "coal mining operations" in the proposed definition of support facilities, which could imply that support facilities are not "coal mining operations." OSM recognizes that in fact they are surface coal mining operations and has adopted language to denote that it is the activities listed in Paragraph (a) of the definition of surface coal mining operations in Section 700.5 to which support facilities must be incident or from which they must result.

#### **D. AMENDMENTS TO SECTION 785.21: PERMITTING RULES FOR COAL PREPARATION PLANTS**

The permitting rules for coal preparation plants are adopted substantially as proposed.

Section 785.21 complements the coal preparation plant definition discussed above by setting permitting requirements for coal preparation plants. Coal preparation plants not within the permit area for a specific mine, other than those located at the site of ultimate use, will be subject to the requirements for such plants as a special category of mining. Section 785.21 contains the permit requirements for regulation of such facilities. Performance standards are set out in Part 827.

Section 785.21 requires any person who operates or intends to operate a coal preparation plant outside the permit area for a specific mine, other than such plants when they are located at the site of ultimate use, to obtain a permit. To obtain the permit, an applicant must supply an operation and reclamation plan which demonstrates that the plant and support facilities associated with it will comply with Part 827 and must describe their construction, operation, maintenance, and planned removal. Preparation plants located in the permit area for a specific mine will not be required to have a separate permit and will be regulated regardless of the location of the ultimate use of the coal.

Some commenters felt that OSM has no jurisdiction over offsite facilities, and therefore that no rules in Part 785 are necessary. As discussed above, OSM believes it has such authority.

Several commenters indicated that OSM's proposed language "directly associated with the ultimate user" presented a confusing test. Commenters pointed out that a more appropriate and more useful test would be whether the plants were at the point of ultimate use. OSM agrees and has adopted language to indicate that only plants situated at the point of ultimate coal use will be deemed to be not "in connection with" a mine.

Commenters were concerned that OSM, in proposing to delete support facilities from the coverage of Section 785.21, would leave many facilities free to operate without a permit. These commenters felt that facilities should not be excluded from coverage.

Support facilities will not be free to operate without a permit. Generally, support facilities will be regulated under the permit for the mine from which they result or to which they are incident. Section 785.21 provides the means for permitting support facilities that are incident to or result from coal preparation plants that are located outside the permit area for the mine.

#### **E. PROTECTION OF UTILITY INSTALLATIONS**

Existing Sections 816.181(b) and 817.181(b), which provide standards for the protection of utility installations, are being redesignated as Sections 816.180 and 817.180. OSM had proposed language which would have had the effect of applying the standards for the protection of utility installations only to damage caused by support facilities. Instead, OSM has elected to continue to apply those standards to all surface coal mining operations.

Many commenters were concerned about the owner-approval requirement in the proposed rule, which would have expressly required owner approval of support and transportation facilities when they would disrupt utility installations. Apparently these commenters felt that this was a new requirement and that it would affect existing contractual relations. The requirement of owner approval before the disruption of utility installations is not a new one. Accordingly, the rule, which has not been amended, should not affect existing contractual relations.

Commenters requested clarification of the phrase "unless otherwise approved by the owner of those facilities and the regulatory authority." The provision is not intended to prohibit or prevent mining operations or to adjust the relative rights of owners of utilities and mineral grants. See the discussion of Section 816.181(b) at *44 FR 15262* (March 13, 1979).

## **F. PERFORMANCE STANDARDS FOR SUPPORT FACILITIES**

Sections 816.181 and 817.181 are parallel sections which set performance standards for support facilities. The two sections are identical, except that Section 816.181 applies to support facilities for surface mines, and Section 817.181 applies to support facilities for underground mines. These two sections were proposed Sections 816.180 and 817.180.

The performance standards for support facilities are adopted as proposed, with minor changes as noted below. Support facilities must be located, maintained, and used in a manner to prevent or control erosion, siltation, water pollution, and damage to public or private property; and must, to the extent possible using the best technology currently available, be located, maintained, and used in a manner that minimizes damage to fish, wildlife, and related environmental values; and must minimize additional contributions of suspended solids to streamflow or runoff outside the permit area. No contribution to runoff is permitted in excess of that allowable under State or Federal law.

Commenters suggested that the proposed support facilities performance standards were unnecessary, because support facilities should not be separately regulated. OSM has adopted special performance standards for support facilities because it believes that these facilities, while permitted in the context or other regulated activities, are sufficiently distinct from other aspects of a mine to be most properly regulated by specifically identified standards.

Some commenters objected to the lack of design criteria in the performance standards for support facilities. These commenters felt that if specific design criteria were not set, then OSM should at least require the regulatory authority to require such information in the context of permitting. The commenters noted limits on some State regulatory authorities which prohibited them from taking steps which would make their regulations more stringent than OSM's.

OSM disagrees. Before issuing a permit, a regulatory authority must have sufficient information to support a finding that a proposed operation will comply with the Act and appropriate regulatory program. So long as the operator meets the performance requirements for these facilities, the requirements of the Act will be met. Should the operator of a support facility fail to meet the performance standards, the regulatory authority must proceed with remedial steps, including issuance of notices of violation and cessation orders. Accordingly, operators will have to design facilities in order to ensure compliance. Regulatory authorities are generally free to solicit additional information. Where State statute prohibits such regulations, the regulatory authority may seek statutory relief.

Commenters suggested that a requirement be added that support areas be stabilized to prevent air pollution from fugitive dust and from wind erosion. Erosion and its attendant air quality impacts are the subject of recently promulgated amendments to Sections 816.95 and 817.95 (*48 FR 1160*, January 10, 1983). These rules are applicable to support facilities as are the other provisions of Parts 816 and 817.

Commenters suggested adding language to Sections 816.181(a) and 817.181(a) which would require specific consideration of water quality and quantity. As adopted, Sections 816.181(b)(1) and 817.181(b)(1) require the prevention or control of water pollution. The term "water pollution" may include disruption of water quality or quantity; accordingly, the suggested change is unnecessary.

Commenters suggested that OSM's use of the word "minimize" in place of "prevention" in Sections 816.181(b)(2)(ii) and 817.181(b)(2)(ii) was inconsistent with the statutory intent because "prevent" implies a goal of total elimination and minimize suggests a less stringent standard. OSM disagrees. In Sections 515(b)(10)(B)(i) and 516(b)(9)(B) of the Act, the word "prevent" is modified with the phrase "to the extent possible using the best technology currently available." OSM believes that in some cases, using the best technology currently available will result in the minimization but not the prevention of increases in suspended solids in streamflow. In those cases, the word "minimize" more accurately captures congressional intent. In others, absolute prevention will result from minimization to the extent possible. In those cases, congressional intent will also be served by this regulation.

## **G. AMENDMENTS TO PART 827: PERFORMANCE STANDARDS FOR COAL PREPARATION PLANTS**

Section 827.1 will serve as both the scope and applicability section for Part 827. It has been shortened to remove unnecessary wording, and the phrase "other than those plants which are located at the site of ultimate coal use" has been added for the reasons described in the next paragraph.

Commenters requested that OSM modify the language in Section 827.11 to read "other than those plants situated at the point of ultimate coal use" in order to clarify that only those plants at the site of ultimate use would be considered not to be "in connection with" a mine. OSM has accepted this suggestion and has modified Section 827.1 accordingly. The title of Section 827.11 has been changed to "General requirements" because that is a more accurate description of the section. The remainder of the section is unchanged.

Section 827.12 contains the performance standards required for coal preparation plants operated outside the permit area for a mine, but not at the site of ultimate coal use. The relevant requirements of Part 816 are specifically referenced in this section in order to minimize unnecessary verbiage and simplify the regulatory requirements. The sections referenced in the following discussions and in Section 827.12 are the preferred alternatives in Volume III of OSM's "Final Environmental Impact Statement OSM-EIS-1: Supplement." Several other rulemakings currently pending at OSM would change some of the sections referenced, and, for convenience, OSM has adopted the section numbers anticipated to be used. If such sections are not adopted as proposed, conforming technical amendments will be issued.

Signs and markers for coal preparation plants, coal processing waste disposal areas, and water-treatment facilities must comply with Section 816.11. Any stream channel diversion must comply with Section 816.43. Drainage from any disturbed area related to the coal preparation plant must comply with Sections 816.45-816.47, and all discharges from these areas must meet the requirements of Sections 816.41 and 816.42 and any other applicable State or Federal law. Permanent impoundments associated with coal preparation plants must meet the requirements of Sections 816.49 and 816.56. Dams constructed of, or impounding, coal processing waste must comply with Section 816.84. Disposal of coal processing waste, noncoal mine waste, and excess spoil must comply with Sections 816.81, 816.83, 816.84, 816.87, 816.89, and 816.71-816.74. Fish, wildlife, and related environmental values must be protected in accordance with Section 816.97. Support facilities related to the coal preparation plant must comply with Section 816.181. Roads and other transportation facilities must comply with Sections 816.150 and 816.151. Cessation of operations must be in accordance with Sections 816.131 and 816.132. Erosion and its attendant air pollution must be controlled in accordance with Section 816.95. Adverse effects upon, or resulting from, nearby underground coal mining activities must be minimized by appropriate measures including, but not limited to, compliance with Section 816.79. Reclamation in general must comply with Sections 816.22, 816.100-816.106, 816.111-816.117, and 816.133.

Commenters were confused about the regulation of support facilities associated with coal preparation plants. Although OSM is deleting the specific reference to support facilities in Section 827.1, support facilities will continue to be regulated in association with the facilities that they support. If a facility is incident to a coal mine, it is bound by the performance standards in Sections 816.181 and 817.181. If it supports a coal preparation plant, it is subject to the general standards for support facilities as well as the standards of Section 827.12.

Commenters felt that OSM should not delete the topsoil handling requirements in previous Section 827.12(m). OSM agrees. The final rule includes the requirement that coal preparation plants should comply with the topsoil handling procedures in Section 816.22.

Commenters objected to the deletion of the requirements that preparation plants comply with Sections 816.53 and 816.54, dealing with wells and the replacement of water rights. OSM believes that use of wells will only infrequently be associated with coal preparation plants. If water rights are affected by coal preparation plants, remedies may be available under State law.

Commenters objected to OSM's proposed deletion of the requirement that a coal preparation plant comply with performance standards for prime farmland. To the degree that coal preparation plants will affect only a minimal amount of land and will be operated over an extended period of time, they fall within an exemption provided for under Judge Flannery's ruling regarding prime farmland requirements. In *Re: Permanent Surface Mining Regulation Litigation*, Civ. Action No. 79-1144, at 3, (D.D.C. May 16, 1980). This exemption will be incorporated into the revised prime farmland requirements.

Commenters felt that OSM should retain previous Section 827.12(k), the performance requirements governing slides, because slides may result from road embankments and coal processing waste areas. OSM believes that its rules governing roads and coal wastes provide sufficient guidance for the construction of these structures to prevent slides.

Commenters felt that OSM should add a requirement for stream buffer zones associated with coal processing plants. OSM had not proposed such a requirement, and has not adopted one in the final rule. Stream buffer zones may be added in a separate rulemaking if experience under this rule indicates that such buffer zones are necessary to meet the Act's objectives.

### III. PROCEDURAL MATTERS

#### Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Interior (DOI) has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (*5 U.S.C. 601 et seq.*)

The reasons underlying this determination are as follows:

This rule will impose only minor costs on the coal industry and coal consumers. This rule will allow small coal operators increased flexibility in meeting performance standards and should especially ease the regulatory burden on small coal operators in Appalachia.

#### Paperwork Reduction Act

The information collection requirements contained in 30 CFR 785.21 has been approved by the Office of Management and Budget under *44 U.S.C. 3507* and assigned clearance number 1029-0040. This approval is codified under 30 CFR 785.10.

The information required by 30 CFR Part 785 will be used by the regulatory authority in implementing the permanent regulatory program.

#### National Environmental Policy Act

OSM has analyzed the impacts of these final rules in its "Final Environmental Impact Statement, OSM-EIS-1: Supplement" according to Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) (*42 U.S.C. 4332(2)(C)*). The final supplement is available in OSM's Administrative Record in Room 5315, 1100 L Street, NW., Washington, D.C., or by mail request to Mark Boster, Chief, Branch of Environmental Analysis, Room 134, Interior South Building, U.S. Department of the Interior, Washington, DC 20240.

This preamble serves as a record of decision under NEPA.

The rule as adopted differs from the preferred alternative in several ways: Several editorial changes have been made which do not change the meaning or intent of the rule, nor the analysis in the discussion of the preferred alternative.

The definition of "coal preparation" contained in the preferred alternative has been revised to serve both as the definition of "coal processing" and of "coal preparation." The environmental impacts of defining "coal processing" are discussed in the discussion of Alternative C of the EIS.

Language has been added to the definition of "coal preparation plant" which clarifies that coal preparation plants may include other facilities which by themselves might not constitute coal preparation. This regulation is substantively the same as that contemplated by the preferred alternative.

The definition of "support facilities" has also been amended to reference explicitly a proximity relationship to a regulated activity. This relationship was contemplated by the preferred alternative. In addition the term "utility installations" has been deleted, and a listing of certain transportation facilities has been added to the examples listed. Utility installations will nonetheless be regulated when they are otherwise subject to the Act; thus, the final rule will have no impacts different from the preferred alternative. The impacts of regulating other transportation facilities as support facilities are contemplated in the discussion of Alternative C.

For clarity, OSM has adopted language exempting certain facilities located at the site of ultimate coal use rather than at the point of ultimate coal use. Both terms are considered in the preferred alternative.

Language in the "utility installations" regulations ( Section 816.180) requires the regulatory authority and the installation owner to approve disruption of utility installations rather than allowing regulatory authority approval of a plan for such disruptions without owner approval. This is the same as the no-action alternative in the EIS.

Several changes to the performance standards for coal preparation plants have been made. Section numbers have been amended to reflect anticipated regulatory changes, with no impacts different from the preferred alternative. The word "diversion" has been substituted for "realignment" for clarity. OSM has determined to cross-reference the topsoil handling, backfilling and grading, postmining land use, and revegetation regulations. Such references were contemplated in the discussion of Alternative B.

#### Agency Approval

Section 516(a) requires that, with regard to rules directed toward the surface effects of underground mining, OSM must obtain written concurrence from the head of the department which administers the Federal Mine Safety and Health Act of 1977, the successor to the Federal Coal Mine Health and Safety Act of 1969. OSM has obtained the written concurrence of the Assistant Secretary for Mine Safety and Health, U.S. Department of Labor.

### **LIST OF SUBJECTS**

#### 30 CFR Part 700

Administrative practice and procedure, Coal mining, Surface mining, Reporting and recordkeeping requirements, Underground mining.

#### 30 CFR Part 701

Coal mining, Law enforcement, Surface mining, Underground mining.

#### 30 CFR Part 785

Coal mining, Reporting and recordkeeping requirements, Surface mining, Underground mining.

#### 30 CFR Part 816

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Surface mining.

#### 30 CFR Part 817

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Underground mining.

#### 30 CFR Part 827

Coal mining, Environmental protection, Surface mining, Underground mining.

For the reasons stated above, 30 CFR Parts 700, 701, 785, 816, 817, and 827 are amended as follows.

Dated: April 7, 1983.

Daniel N. Miller, Jr., Assistant Secretary for Energy and Minerals.

### **PART 700 -- GENERAL**

1. Section 700.5 is amended by revising the definition of "surface coal mining operations" to read as follows:

#### **SECTION 700.5 - DEFINITIONS.**

\* \* \* \* \*

**SURFACE COAL MINING OPERATIONS** means --

(a) Activities conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of Section 516 of the Act, surface operations and surface impacts incident to an underground coal mine, the

products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining; the use of explosives and blasting; in-situ distillation, retorting, leaching, or other chemical or physical processing; and the cleaning, concentrating, or other processing or preparation of coal. Such activities also include the loading of coal for interstate commerce at or near the mine site. Provided, these activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed 16 2/3 percent of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to Section 512 of the Act; and, Provided further, That excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles; and

(b) The areas upon which the activities described in paragraph (a) of this definition occur or where such activities disturb the natural land surface. These areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities and for haulage and excavation, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or material on the surface, resulting from or incident to those activities.

\* \* \* \* \*

## **PART 701 -- PERMANENT REGULATORY PROGRAM**

2. Section 701.5 is amended by removing the definition of "coal processing plant" and by adding, in alphabetical order, definitions for "coal preparation" or "coal processing," "coal preparation plant," and "support facilities."

### **SECTION 701.5 - DEFINITIONS.**

\* \* \* \* \*

**COAL PREPARATION OR COAL PROCESSING** means the cleaning, concentrating, or other processing or preparation of coal in order to separate coal from its impurities.

**COAL PREPARATION PLANT** means a facility where coal is subjected to cleaning, concentrating, or other processing or preparation in order to separate coal from its impurities. When associated with a facility that separates coal from its impurities, a preparation plant may include, but need not be limited to, the following facilities: loading facilities; storage and stockpile facilities; sheds, shops, and other buildings; water-treatment and water-storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

\* \* \* \* \*

**SUPPORT FACILITIES** means those facilities resulting from, or incident to, an activity identified in Paragraph (a) of the definition of "surface coal mining operations" in Section 700.5 of this chapter and the areas upon which such facilities are located. Support facilities may consist of, but need not be limited to, the following facilities: mine buildings; bath houses; coal loading facilities; coal crushing and sizing facilities; coal storage facilities; equipment and storage facilities; fan buildings; hoist buildings; sheds, shops, and other buildings; facilities used to treat and store water for mine consumption; and railroads, surface conveyor systems, chutes, aerial tramways, or other transportation facilities, but not including roads. "Resulting from or incident to" an activity connotes an element of proximity to that activity.

\* \* \* \* \*

## **PART 785 -- REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING**

3. Section 785.21 is revised to read as follows:

### **SECTION 785.21 - COAL PREPARATION PLANTS NOT LOCATED WITHIN THE PERMIT AREA OF A MINE.**

(a) This section applies to any person who operates or intends to operate a coal preparation plant outside the permit area of any mine, other than such plants which are located at the site of ultimate coal use. Any person who operates such a preparation plant shall obtain a permit from the regulatory authority in accordance with the requirements of this section.

(b) Any application for a permit for operations covered by this section shall contain an operation and reclamation plan which specifies plans, including descriptions, maps, and cross sections, of the construction, operation, maintenance, and removal of the preparation plant and support facilities operated incident thereto or resulting therefrom. The plan shall demonstrate that those operations will be conducted in compliance with Part 827 of this chapter.

(c) No permit shall be issued for any operation covered by this section, unless the regulatory authority finds in writing that, in addition to meeting all other applicable requirements of this subchapter, the operations will be conducted in compliance with the requirements of Part 827 of this chapter.

## **PART 816 -- PERMANENT PROGRAM PERFORMANCE STANDARDS -- SURFACE MINING ACTIVITIES**

4. Section 816.180 is revised to read as follows:

### **SECTION 816.180 - UTILITY INSTALLATIONS.**

All surface coal mining operations shall be conducted in a manner which minimizes damage, destruction, or disruption of services provided by oil, gas, and water wells; oil, gas, and coal-slurry pipelines; railroads; electric and telephone lines; and water and sewage lines which pass over, under, or through the permit area, unless otherwise approved by the owner of those facilities and the regulatory authority.

5. Section 816.181 is revised to read as follows:

### **SECTION 816.181 - SUPPORT FACILITIES.**

(a) Support facilities shall be operated in accordance with a permit issued for the mine or coal preparation operation to which it is incident or from which its operation results.

(b) In addition to the other provisions of this part, support facilities shall be located, maintained, and used in a manner that --

(1) Prevents or controls erosion and siltation, water pollution, and damage to public or private property; and (2) To the extent possible using the best technology currently available --

(i) Minimizes damage to fish, wildlife, and related environmental values; and

(ii) Minimizes additional contributions of suspended solids to streamflow or runoff outside the permit area. Any such contributions shall not be in excess of limitations of State or Federal law.



**PART 817 -- PERMANENT PROGRAM PERFORMANCE STANDARDS -- UNDERGROUND MINING ACTIVITIES**

6. Section 817.180 is revised to read as follows:

**SECTION 817.180 - UTILITY INSTALLATIONS.**

All underground mining activities shall be conducted in a manner which minimizes damage, destruction, or disruption of services provided by oil, gas, and water wells; oil, gas, and coal-slurry pipelines, railroads; electric and telephone lines; and water and sewage lines which pass over, under, or through the permit area, unless otherwise approved by the owner of those facilities and the regulatory authority.

7. Section 817.181 is revised to read as follows:

**SECTION 817.181 - SUPPORT FACILITIES.**

(a) Support facilities shall be operated in accordance with a permit issued for the mine or coal preparation plant to which it is incident or from which its operation results.

(b) In addition to the other provisions of this part, support facilities shall be located, maintained, and used in a manner that --

(1) Prevents or controls erosion and siltation, water pollution, and damage to public or private property; and (2) To the extent possible using the best technology currently available --

(i) Minimizes damage to fish, wildlife, and related environmental values; and

(ii) Minimizes additional contributions of suspended solids to streamflow or runoff outside the permit area. Any such contributions shall not be in excess of limitations of State or Federal law.

6. Part 827 is revised to read as follows:

**PART 827 -- PERMANENT PROGRAM PERFORMANCE STANDARDS -- COAL PREPARATION PLANTS NOT LOCATED WITHIN THE PERMIT AREA OF A MINE**

Section

827.1 Scope.

827.11 General requirements.

827.12 Coal preparation plants: Performance standards.

Authority: Pub. L. 95-87, 30 U.S.C. 1201 et seq.

**SECTION 827.1 - SCOPE.**

This part sets forth requirements for coal preparation plants not within the permit area for a specific mine other than those plants which are located at the site of ultimate coal use.

**SECTION 827.11 - GENERAL REQUIREMENTS.**

Each person who operates a coal preparation plant subject to this part shall obtain a permit in accordance with Section 785.21 of this chapter, obtain a bond in accordance with Subchapter J of this chapter, and operate that plant in accordance with the requirements of this part.

**SECTION 827.12 - COAL PREPARATION PLANTS: PERFORMANCE STANDARDS.**

Construction, operation, maintenance, modification, reclamation, and removal activities at coal preparation plants shall comply with the following:

- (a) Signs and markers for the coal preparation plant, coal processing waste disposal area, and water-treatment facilities shall comply with Section 816.11 of this chapter.
- (b) Any stream channel diversion shall comply with Section 816.43 of this chapter.
- (c) Drainage from any disturbed area related to the coal preparation plant shall comply with Sections 816.45-816.47 of this chapter, and all discharges from these areas shall meet the requirements of Sections 816.41 and 816.42 of this chapter and any other applicable State or Federal law.
- (d) Permanent impoundments associated with coal preparation plants shall meet the requirements of Sections 816.49 and 816.56 of this chapter. Dams constructed of, or impounding, coal processing waste shall comply with Section 816.84 of this chapter.
- (e) Disposal of coal processing waste, noncoal mine waste, and excess spoil shall comply with Sections 816.81, 816.83, 816.84, 816.87, 816.89, and 816.71-816.74 of this chapter, respectively.
- (f) Fish, wildlife, and related environmental values shall be protection in accordance with Section 816.97 of this chapter.
- (g) Support facilities related to the coal preparation plant shall comply with Section 816.181 of this chapter.
- (h) Roads shall comply with Sections 816.150 and 816.151 of this chapter.
- (i) Cessation of operations shall be in accordance with Sections 816.131 and 816.132 of this chapter.
- (j) Erosion and air pollution attendant to erosion shall be controlled in accordance with Section 816.95 of this chapter.
- (k) Adverse effects upon, or resulting from, nearby underground coal mining activities shall be minimized by appropriate measures including, but not limited to, compliance with Section 816.79 of this chapter.
- (l) Reclamation shall follow proper topsoil handling, backfilling and grading, revegetation, and postmining land use procedures in accordance with Sections 816.22, 816.100, 816.102, 816.104, 816.106, 816.111, 816.113, 816.114, 816.116, and 816.133 of this chapter, respectively.