



United States Department of the Interior

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT



November 1, 2019

Memorandum

To: Lanny E. Erdos *LE*
Principal Deputy Director

Glenda H. Owens *GHO*
Deputy Director

(Approved: Disapproved:)

From: Julie E. Cook *Julie Cook*
Chief, Division of Compliance Management

Subject: Reclamation Fee Liability for Coal Refuse, "2019 No Value Policy Statement"

As discussed in our November 1, 2019 meeting, we have revised the 1994 No Value Policy, which established guidelines for a finding of no reclamation fee liability on coal refuse.

The 2019 No Value Policy will encourage the remining and use of waste coal for domestic energy production as well as promote the reclamation of more abandoned mine lands than would otherwise be achieved, without being inconsistent with current laws and regulations. The revisions reflect changes in technology in both remining and facilities qualified to burn waste material since this policy was originally issued. The revisions are consistent with the flexibility afforded in the 1994 No Value Policy, and the authority and responsibility vested in you as the Director under Sections 201 and 413 of the Surface Mining and Control and Reclamation Act and your discretion to exercise flexibility in discharging those responsibilities.

The draft policy, as attached, has been coordinated with the No Value workgroup comprised of Appalachian Region, Program Support, Compliance Management and the OSMRE Senior Advisor.

With your approval, we will begin implementation of the attached policy immediately.

2019 No Value Policy Statement

Reclamation Fee Liability On Coal Refuse

I. Introduction:

In July 1994, Office of Surface Mining Reclamation and Enforcement (OSMRE) Director Robert Uram issued a Memorandum entitled, “Reclamation Fee Liability on Coal Refuse Piles.” This Memorandum, referred to as the “1994 No Value Policy” serves as the core basis for which certain coal refuse may be determined to have “no value” and thus exempt from the reclamation fee mandated by section 402(a) (30 U.S.C. 1232 (a)) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The 1994 No Value Policy was intended to assist with SMCRA Title IV efforts to utilize coal refuse that was abandoned before August 3, 1977 for which there is no reclamation responsibility. The continuing need for the No Value Policy is highlighted by the current strain on the Abandoned Mine Reclamation Fund (AML Fund) and the import of reclaiming legacy mine sites that otherwise would be cost prohibitive to reclaim.

II. Purpose:

The purpose of this guidance is to revise the 1994 No Value Policy as there have been significant changes in technology in both remining and the facilities qualified to burn waste material since this policy was originally issued. Moreover, evolution of the coal industry continues to shape the funding of the AML Fund and the ability to reclaim legacy mine sites. Therefore, it is important for OSMRE to update the 1994 No Value Policy to remain current and continue to satisfy the objectives of the agency, including “assisting the States in the development of State programs for surface coal mining and reclamation operations that meet the requirements of the Act.” (30 U.S.C. 1211(c)(9)). The 1994 No Value Policy foresaw and encouraged the evolution of the policy as information is gathered, stating “In addition, adjustments may be made as more experience is gained on this topic.” Therefore, OSMRE has the flexibility and obligation under SMCRA to issue this guidance. The guidance included in this document is provided to ensure consistency, offer an incentive for use of abandoned coal refuse as a coal waste fuel, promote pre-law reclamation efforts and assist those responsible for evaluating requests for No Value Determinations.

III. Eligible Refuse:

To be eligible for a No Value Determination, the refuse must be material that was a by-product of a coal mining operation abandoned prior to August 3, 1977. Refuse is also eligible if it meets the requirements of 30 CFR 874.12 (d) and (e).¹ Coal refuse material from refuse piles, slurry impoundments, silt ponds and culm banks are eligible under the No Value Policy.

IV. Procedure:

To be considered for a No Value Determination, the permittee must submit a formal request and supporting documentation to the Chief, Division of Compliance Management (DCM). A

¹ 30 CFR 874.12 (d) pertains to eligible coal lands and water damaged and abandoned after August 3, 1977 and 30 CFR 874.12(e) is specific to certain uncertified States and Tribes.

separate request must be submitted for each permitted operation, or for each area of the permit containing refuse if the permitted area includes more than one abandoned coal refuse disposal site. Upon receipt of a request for a No Value Determination, DCM will review the documentation required to evaluate the request, formulate a draft decision and circulate it to the parties listed below for comment:

Assistant Director, Program Support
Assistant Solicitor, Division of Mineral Resource
Regional Director, (based on mine location)
Field Office Director, (based on mine location)

Within 15 days these parties may notify DCM of any information they believe is pertinent in evaluating the requests. After consideration of any relevant information and conducting any follow-up, if necessary, the Chief, DCM, will issue a final agency decision that approves or denies the permittee's request for a No Value Determination.

All coal operators are required to file a Form OSM-1 to report the tonnage and maintain all supporting documentation, even if a No Value Determination is approved. Any tons sold or transferred prior to receiving an approved No Value Determination must be reported and fees paid at the surface or *ad valorem* rate.

As in the past, a No Value Determination does not release or in any way circumscribe the operator's or other responsible party's obligations under SMCRA, Title V.

Operators are advised that a change in any of the factors on which a No Value Determination is made could subject the material to fee assessment, and that any such changes must be immediately reported to OSMRE.

V. Criteria:

Each request for No Value Determination will be evaluated individually. Some coal refuse material may qualify for a No Value Determination while other material from the same permit may not be eligible. To be eligible for a No Value Determination, the coal refuse material must meet **all four** of the No Value criteria. The following criteria represent the minimum standards that must be met.

1. ***The material was or is the waste by-product of a coal preparation process.*** To meet this criterion, the refuse material must have been a by-product of a coal mining operation abandoned prior to August 3, 1977 or meet the requirements of 30 CFR 874.12 (d) and (e).²
2. ***The waste material is used in a small power production or cogeneration facility qualified by Federal Energy Regulatory Commission (FERC) to burn waste***

² 30 CFR 874.12 (d) pertains to eligible coal lands and water damaged and abandoned after August 3, 1977 and 30 CFR 874.12(e) is specific to certain uncertified States and Tribes.

material. In order to grant certification, the Commission must find that the refuse material is a by-product and has little or no value. All qualifying small power production or cogeneration facilities are identified by FERC with a docket prefix of “QF”. Refuse material with little or no value transferred directly from a designated refuse area to a facility that can utilize waste material, but not designated by FERC as a “QF” may meet this criterion, but must receive prior approval from the Chief, DCM.³

3. ***Except for use in the waste-coal fired small power production or cogeneration facility, there exists no relevant market for the waste material. The facility would not exist but for the fact that the refuse material is waste material and governmental incentives have been created to utilize this type of disposal.*** The coal refuse material must have little or no value. The following factors will be considered in making this determination:
 - The total price received for the refuse material.
 - The amount paid for transportation and handling of the refuse material. Transportation and handling cannot exceed that paid for loading, handling and transporting similar material in the market area.
 - The Btu and ash content.
 - Price variances based on Btu and ash content. The occurrence of a price variance based on Btu and ash content implies value but will not automatically disqualify material from meeting this criterion, as long as the material can be deemed to have little value. In cases where the price per ton exceeds the usual amount paid for similar material, OSMRE may determine through audit that some or all of the material is subject to reclamation fees.

4. ***The classification of the material as waste with no value for AML fee purposes will not be affected by sorting or screening of refuse to separate usable waste from that which is not usable in the waste-coal facility. However, reprocessing utilizing gravity separation to remove the residual coal from the refuse will subject the product to AML fees even if the product is used in a licensed waste burner.*** Any reprocessing using gravity separation will disqualify the waste material for a No Value Determination.

In addition, adjustments may be made as more experience is gained on this topic.

³ For example, refuse material transferred to a waste-coal-fired generating plant using the same circulating fluidized bed boilers (CFBs) as a QF facility, but not designated by FERC as a qualifying facility only because of its size, such as the Seward Power Plant, would meet this criterion.