

**(e) Variances to original contour restoration requirements**

(1) Each State program may and each Federal program shall include procedures pursuant to which the regulatory authority may permit variances for the purposes set forth in paragraph (3) of this subsection, provided that the watershed control of the area is improved; and further provided complete backfilling with spoil material shall be required to cover completely the highwall which material will maintain stability following mining and reclamation.

(2) Where an applicant meets the requirements of paragraphs (3) and (4) of this subsection a variance from the requirement to restore to approximate original contour set forth in subsection (d)(2) of this section may be granted for the surface mining of coal where the owner of the surface knowingly requests in writing, as a part of the permit application that such a variance be granted so as to render the land, after reclamation, suitable for an industrial, commercial, residential, or public use (including recreational facilities) in accord with the further provisions of (3) and (4) of this subsection.

(3)(A) After consultation with the appropriate land use planning agencies, if any, the potential use of the affected land is deemed to constitute an equal or better economic or public use;

(B) is designed and certified by a qualified registered professional engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site; and

(C) after approval of the appropriate State environmental agencies, the watershed of the affected land is deemed to be improved.

(4) In granting a variance pursuant to this subsection the regulatory authority shall require that only such amount of spoil will be placed off the mine bench as is necessary to achieve the planned postmining land use, insure stability of the spoil retained on the bench, meet all other requirements of this chapter, and all spoil placement off the mine bench must comply with subsection (b)(22).

(5) The regulatory authority shall promulgate specific regulations to govern the granting of variances in accord with the provisions of this subsection, and may impose such additional requirements as he deems to be necessary.

(6) All exceptions granted under the provisions of this subsection shall be reviewed not more than three years from the date of issuance of the permit, unless the permittee affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the reclamation plan.

**(f) Standards and criteria for coal mine waste piles**

The Secretary, with the written concurrence of the Chief of Engineers, shall establish within one hundred and thirty-five days from August 3, 1977, standards and criteria regulating the design, location, construction, operation, maintenance, enlargement, modification, removal, and abandonment of new and existing coal mine waste piles referred to in subsection (b)(13) and section 1266(b)(5) of this title. Such standards and criteria shall conform to the standards and

criteria used by the Chief of Engineers to insure that flood control structures are safe and effectively perform their intended function. In addition to engineering and other technical specifications the standards and criteria developed pursuant to this subsection must include provisions for: review and approval of plans and specifications prior to construction, enlargement, modification, removal, or abandonment; performance of periodic inspections during construction; issuance of certificates of approval upon completion of construction; performance of periodic safety inspections; and issuance of notices for required remedial or maintenance work.

(Pub. L. 95-87, title V, §515, Aug. 3, 1977, 91 Stat. 486; Pub. L. 99-500, §101(h) [title I, §123], Oct. 18, 1986, 100 Stat. 1783-242, 1783-267, and Pub. L. 99-591, §101(h) [title I, §123], Oct. 30, 1986, 100 Stat. 3341-242, 3341-267; Pub. L. 102-486, title XXV, §2503(b), Oct. 24, 1992, 106 Stat. 3102.)

## REFERENCES IN TEXT

Public Law 83-566, referred to in subsec. (b)(8)(B), is act Aug. 4, 1954, ch. 656, 68 Stat. 666, known as the Watershed Protection and Flood Prevention Act, which is classified principally to chapter 18 (§1001 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 16 and Tables.

## CODIFICATION

Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

## AMENDMENTS

1992—Subsec. (b)(20). Pub. L. 102-486 designated existing provisions as subpar. (A) and added subpar. (B).

1986—Subsec. (b)(10)(B)(ii). Pub. L. 99-500 and Pub. L. 99-591 inserted “or a qualified registered professional land surveyor in any State which authorizes land surveyors to prepare and certify such maps or plans”.

**§ 1266. Surface effects of underground coal mining operations****(a) Rules and regulations**

The Secretary shall promulgate rules and regulations directed toward the surface effects of underground coal mining operations, embodying the following requirements and in accordance with the procedures established under section 1251 of this title: *Provided, however*, That in adopting any rules and regulations the Secretary shall consider the distinct difference between surface coal mining and underground coal mining. Such rules and regulations shall not conflict with nor supersede any provision of the Federal Coal Mine Health and Safety Act of 1969 [30 U.S.C. 801 et seq.] nor any regulation issued pursuant thereto, and shall not be promulgated until the Secretary has obtained the written concurrence of the head of the department which administers such Act.

**(b) Permit requirements**

Each permit issued under any approved State or Federal program pursuant to this chapter and relating to underground coal mining shall require the operator to—

(1) adopt measures consistent with known technology in order to prevent subsidence causing material damage to the extent technologically and economically feasible, maximize

mine stability, and maintain the value and reasonably foreseeable use of such surface lands, except in those instances where the mining technology used requires planned subsidence in a predictable and controlled manner: *Provided*, That nothing in this subsection shall be construed to prohibit the standard method of room and pillar mining;

(2) seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine working when no longer needed for the conduct of the mining operations;

(3) fill or seal exploratory holes no longer necessary for mining, maximizing to the extent technologically and economically feasible return of mine and processing waste, tailings, and any other waste incident to the mining operation, to the mine workings or excavations;

(4) with respect to surface disposal of mine wastes, tailings, coal processing wastes, and other wastes in areas other than the mine workings or excavations, stabilize all waste piles created by the permittee from current operations through construction in compacted layers including the use of incombustible and impervious materials if necessary and assure that the leachate will not degrade below water quality standards established pursuant to applicable Federal and State law surface or ground waters and that the final contour of the waste accumulation will be compatible with natural surroundings and that the site is stabilized and revegetated according to the provisions of this section;

(5) design, locate, construct, operate, maintain, enlarge, modify, and remove, or abandon, in accordance with the standards and criteria developed pursuant to section 1265(f) of this title, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes and used either temporarily or permanently as dams or embankments;

(6) establish on regraded areas and all other lands affected, a diverse and permanent vegetative cover capable of self-regeneration and plant succession and at least equal in extent of cover to the natural vegetation of the area;

(7) protect offsite areas from damages which may result from such mining operations;

(8) eliminate fire hazards and otherwise eliminate conditions which constitute a hazard to health and safety of the public;

(9) minimize the disturbances of the prevailing hydrologic balance at the minesite and in associated offsite areas and to the quantity of water in surface ground water systems both during and after coal mining operations and during reclamation by—

(A) avoiding acid or other toxic mine drainage by such measures as, but not limited to—

(i) preventing or removing water from contact with toxic producing deposits;

(ii) treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses;

(iii) casing, sealing, or otherwise managing boreholes, shafts, and wells to keep

acid or other toxic drainage from entering ground and surface waters; and

(B) conducting surface coal mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area (but in no event shall such contributions be in excess of requirements set by applicable State or Federal law), and avoiding channel deepening or enlargement in operations requiring the discharge of water from mines;

(10) with respect to other surface impacts not specified in this subsection including 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, 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 incident to such activities, operate in accordance with the standards established under section 1265 of this title for such effects which result from surface coal mining operations: *Provided*, That the Secretary shall make such modifications in the requirements imposed by this paragraph as are necessary to accommodate the distinct difference between surface and underground coal mining;

(11) to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values, and achieve enhancement of such resources where practicable;

(12) locate openings for all new drift mines working acid-producing or iron-producing coal seams in such a manner as to prevent a gravity discharge of water from the mine.

**(c) Suspension of underground coal mining operations in urbanized areas**

In order to protect the stability of the land, the regulatory authority shall suspend underground coal mining under urbanized areas, cities, towns, and communities and adjacent to industrial or commercial buildings, major impoundments, or permanent streams if he finds imminent danger to inhabitants of the urbanized areas, cities, towns, and communities.

**(d) Applicability of this subchapter to surface operations and surface impacts incident to underground coal mining operations**

The provisions of this subchapter relating to State and Federal programs, permits, bonds, inspections and enforcement, public review, and administrative and judicial review shall be applicable to surface operations and surface impacts incident to an underground coal mine with such modifications to the permit application requirements, permit approval or denial procedures, and bond requirements as are necessary to accommodate the distinct difference between surface and underground coal mining. The Secretary shall promulgate such modifications in accordance with the rulemaking procedure established in section 1251 of this title.

(Pub. L. 95-87, title V, §516, Aug. 3, 1977, 91 Stat. 495.)

## REFERENCES IN TEXT

The Federal Coal Mine Health and Safety Act of 1969, referred to in subsec. (a), is Pub. L. 91-173, Dec. 30, 1969, 83 Stat. 742, as amended, which was redesignated the Federal Mine Safety and Health Act of 1977 by Pub. L. 95-164, title I, §101, Nov. 9, 1977, 91 Stat. 1290, and is classified principally to chapter 22 (§801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 801 of this title and Tables.

**§ 1267. Inspections and monitoring****(a) Inspections of surface coal mining and reclamation operations**

The Secretary shall cause to be made such inspections of any surface coal mining and reclamation operations as are necessary to evaluate the administration of approved State programs, or to develop or enforce any Federal program, and for such purposes authorized representatives of the Secretary shall have a right of entry to, upon, or through any surface coal mining and reclamation operations.

**(b) Records and reports; monitoring systems; evaluation of results**

For the purpose of developing or assisting in the development, administration, and enforcement of any approved State or Federal program under this chapter or in the administration and enforcement of any permit under this chapter, or of determining whether any person is in violation of any requirement of any such State or Federal program or any other requirement of this chapter—

(1) the regulatory authority shall require any permittee to (A) establish and maintain appropriate records, (B) make monthly reports to the regulatory authority, (C) install, use, and maintain any necessary monitoring equipment or methods, (D) evaluate results in accordance with such methods, at such locations, intervals, and in such manner as a regulatory authority shall prescribe, and (E) provide such other information relative to surface coal mining and reclamation operations as the regulatory authority deems reasonable and necessary;

(2) for those surface coal mining and reclamation operations which remove or disturb strata that serve as aquifers which significantly insure the hydrologic balance of water use either on or off the mining site, the regulatory authority shall specify those—

(A) monitoring sites to record the quantity and quality of surface drainage above and below the minesite as well as in the potential zone of influence;

(B) monitoring sites to record level, amount, and samples of ground water and aquifers potentially affected by the mining and also directly below the lowermost (deepest) coal seam to be mined;

(C) records of well logs and borehole data to be maintained; and

(D) monitoring sites to record precipitation.

The monitoring data collection and analysis required by this section shall be conducted according to standards and procedures set forth by the regulatory authority in order to assure their reliability and validity; and

(3) the authorized representatives of the regulatory authority, without advance notice and upon presentation of appropriate credentials (A) shall have the right of entry to, upon, or through any surface coal mining and reclamation operations or any premises in which any records required to be maintained under paragraph (1) of this subsection are located; and (B) may at reasonable times, and without delay, have access to and copy any records, inspect any monitoring equipment or method of operation required under this chapter.

**(c) Inspection intervals**

The inspections by the regulatory authority shall (1) occur on an irregular basis averaging not less than one partial inspection per month and one complete inspection per calendar quarter for the surface coal mining and reclamation operation covered by each permit; (2) occur without prior notice to the permittee or his agents or employees except for necessary onsite meetings with the permittee; and (3) include the filing of inspection reports adequate to enforce the requirements of and to carry out the terms and purposes of this chapter.

**(d) Maintenance of sign**

Each permittee shall conspicuously maintain at the entrances to the surface coal mining and reclamation operations a clearly visible sign which sets forth the name, business address, and phone number of the permittee and the permit number of the surface coal mining and reclamation operations.

**(e) Violations**

Each inspector, upon detection of each violation of any requirement of any State or Federal program or of this chapter, shall forthwith inform the operator in writing, and shall report in writing any such violation to the regulatory authority.

**(f) Availability of information to public**

Copies of any records, reports, inspection materials, or information obtained under this subchapter by the regulatory authority shall be made immediately available to the public at central and sufficient locations in the county, multicounty, and State area of mining so that they are conveniently available to residents in the areas of mining.

**(g) Conflict of interest; penalty; publication of regulations; report to Congress**

No employee of the State regulatory authority performing any function or duty under this chapter shall have a direct or indirect financial interest in any underground or surface coal mining operation. Whoever knowingly violates the provisions of this subsection shall, upon conviction, be punished by a fine of not more than \$2,500, or by imprisonment of not more than one year, or by both. The Secretary shall (1) within sixty days after August 3, 1977, publish in the Federal Register, in accordance with section 553 of title 5, regulations to establish methods by which the provisions of this subsection will be monitored and enforced by the Secretary and such State regulatory authority, including appropriate provisions for the filing by such employees and the review of statements and sup-