

Arkansas Pollution Control and Ecology Commission

Rule Number 20



The Arkansas Surface Coal Mining and Reclamation Code

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SUBCHAPTER A -- GENERAL

PART 700 -- GENERAL

SECTION

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SECTION 700.1 TITLE AND SCOPE

5-27-99

These rules which establish the procedures through which the Division of Environmental Quality will implement the Surface Coal Mining and Reclamation Act of 1979, shall be known as the Arkansas Surface Coal Mining and Reclamation Code, hereinafter the Code.

- (a) Subchapter A contains introductory information intended to serve as a guide to the rest of the Chapter and to the regulatory requirements and definitions generally applicable to the programs and persons covered by the Act.
- (b) Subchapter F implements the requirements of the Act for –
 - (1) Designating lands which are unsuitable for all or certain types of surface coal mining operations;
 - (2) Terminating designations no longer found to be appropriate; and
 - (3) Prohibiting surface coal mining and reclamation operations on those lands or areas where the Act states that surface coal mining operations should not be permitted or should be permitted only after specified determinations are made.
- (c) Subchapter G governs applications for and decisions on permits for surface coal mining and reclamation operations on non-Federal lands under the State program. It also governs coal exploration and permit application and decisions on permits for special categories of coal mining on non-Federal lands under the State program. Rules implementing the experimental practices provision of the Act are also included in Subchapter G.

- (d) Subchapter J sets forth requirements for performance bonds and public liability insurance for both surface mining and underground mining activities.
- (e) Subchapter K sets forth the environmental and other performance standards which apply to coal exploration and to surface coal mining and reclamation operations under the State program. Performance standards applicable to special mining situations such as anthracite mines, steep slope mining, and prime farmlands are included.
- (f) Subchapter L sets forth the inspection, enforcement, and civil penalty provisions that apply to the State program.
- (g) Subchapter M sets forth the requirements for the training, examination, and certification of blasters.
- (h) Subchapter R sets forth the rules for the abandoned mine land reclamation program. These rules include the fee collection requirements and the mechanisms for implementing the State portion of the abandoned mine land reclamation program.

SECTION 700.2

OBJECTIVE

5-29-80

The objective of these rules is to fulfill the purposes of the Act found in Section 3 in a manner which is consistent with the language of the Act, its legislative history, other applicable laws, and judicial interpretations.

SECTION 700.5

DEFINITIONS

5-27-99

As used throughout this Code the following terms have the specified meaning except where otherwise indicated –

Act means the Surface Coal Mining and Reclamation Act of 1979.

Anthracite means coal classified as anthracite in ASTM Standard D 388-77. Coal classifications are published by the American Society of Testing and Materials under the title, Standard Specification for Classification of Coals by Rank, ASTM D 388-77, on pages 220 through 224. Table 1 which classifies the coals by rank is presented on page 223. This publication is hereby incorporated by reference as it exists on the date of adoption of these rules. Notices of changes made to this publication will be periodically published by the Division. This ASTM Standard is on file and available for inspection at the central office of the Division. Copies of this publication may also be obtained by writing to Office of Surface Mines, U.S. Department of the Interior, South Interior Bldg., Washington, DC 20240.

Central Office means the general office of the Division of Environmental Quality at 8001 National Drive, Little Rock, Arkansas.

Coal means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77, referred to and incorporated by reference in the definition of 'anthracite' above.

Commission means the Arkansas Pollution Control and Ecology Commission, or such department, commission, bureau or agency as shall lawfully succeed to the powers and duties of said Commission.

Division means the Division of Environmental Quality.

Director means the Director of the Division of Environmental Quality or his authorized representative.

Federal lands means any land, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands.

Federal lands program means a program established by the Secretary pursuant to Section 523 of Public Law 95-87 to regulate surface coal mining and reclamation operations on Federal lands.

Field Offices means such offices other than the central office that the Division may maintain throughout the State for administering and enforcing the State program.

Fund means the Abandoned Mine Reclamation Fund established pursuant to Section 5(c)(19) of the Act.

Indian tribe means any Indian tribe, band, group, or community having a governing body recognized by the Secretary.

OSM Director means the Director, Office of Surface Mining Reclamation and Enforcement, or the Director's representative.

OSM means the Office of Surface Mining Reclamation and Enforcement established under Title II of Public Law 95-87.

OSM Regional Director means a Regional Director of OSM or a Regional Director's representative.

Person means an individual, Indian tribe when conducting surface coal mining and reclamation operations on non-Indian lands, partnership, association, society, joint venture, joint stock company,

firm, company, corporation, cooperative or other business organization and any agency, unit, or instrumentality of Federal, State or local government including any publicly owned utility or publicly owned corporation of Federal, State, or local government.

Person having an interest which is or may be adversely affected or person with a valid legal interest shall include any person –

- (a) Who uses any resource of economic, recreational, aesthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the Commission, the Division, or the Director; or
- (b) Whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the Commission, the Division, or the Director.

Public Law 95-87 means the Surface Mining Control and Reclamation Act of 1977.

Public office means a facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

Secretary means the Secretary of the Interior or the Secretary's representative.

State program means a program established by the Division and approved by the Secretary of the Interior pursuant to Public Law 95-87. Section 503 to regulate surface mining and reclamation operations on lands with the State. If a cooperative agreement under 30 CFR 745 has been executed, the State program may apply to Federal lands, in accordance with the terms of the agreement.

Surface coal mining operations means

- (a) Activities conducted on the surface of lands in connection with a surface coal mine or, 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, these activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed 16 2/3 per cent of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to Section 13 of the Act; and provided further, that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles; and,
- (b) Areas upon which the activities described in paragraph (a) above occur or where those

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, entry ways, 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.

Surface coal mining and reclamation operations means surface coal mining operations and all activities necessary or incidental to the reclamation of such operations. This term includes the term surface coal mining operations.

Ton means 2000 pounds avoirdupois (.90718 metric ton).

SECTION 700.10 APPLICABILITY

12-05-97

- (a) This code applies to all coal exploration and surface coal mining and reclamation operations, except
 - (1) The extraction of coal by a landowner for his or her own noncommercial use from land owned or leased by him or her. Noncommercial use does not include the extraction of coal by one unit of an integrated company or other business or nonprofit entity which uses the coal in its own manufacturing or power plants;
 - (2) The extraction of 250 tons of coal or less by a person conducting a surface coal mining and reclamation operation. A person who intends to remove more than 250 tons is not exempted;
 - (3) The extraction of coal as an incidental part of Federal, State or local government-financed highway or other construction in accordance with Part 707;

- (4) The extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 2/3 percent of the mineral tonnage removed for commercial use or sale in accordance with Part 702;
 - (5) Coal explorations on Federal lands outside a permit area.
- (b) Termination of Jurisdiction
- (1) The Division may terminate its jurisdiction under the state program over the reclaimed site of a completed surface coal mining and reclamation operation, or increment thereof, when:
 - (i) The Director determines in writing that under the initial program, all requirements imposed under the initial program have been successfully completed; or
 - (ii) The Director determines in writing that under the permanent program, all requirements imposed under the state program have been successfully completed or, where a performance bond was required, the Director has made a final decision in accordance with Part 807 of this Chapter to release the performance bond fully.
 - (2) Following a termination under paragraph (b)(1) of this section, the Division shall reassert jurisdiction under the state program over a site if it is demonstrated that the bond release or written determination referred to in paragraph (b)(1) of this section was based upon fraud, collusion, or misrepresentation of a material fact.

SECTION 700.11

RULEMAKING INITIATED BY THE COMMISSION

5-29-80

- (a) The Commission may, pursuant to Sections 5(b) and 27 of the Act, initiate a rulemaking proceeding upon its own motion.
- (b) If the Commission determines that a public hearing should be held or if an interested person who has submitted written comments on the proposed rule requests a public hearing within 10 days after receipt of his comments by the Commission, the Commission shall hold a public hearing and shall give prior notice of the time, date, and place of such hearing in a newspaper of general circulation in the State, and by mailing a copy of such notice to all persons who have submitted comments to the Commission.

- (a)
 - (1) Any person may petition the Commission to initiate a proceeding for the issuance, amendment, or repeal of any rule under the Act. The petition shall be filed in the Central Office.
 - (2) The Director shall petition the Commission to initiate a proceeding for the issuance, amendment, or repeal of any rule under the Act at any time that a regulation found in 30 CFR Chapter VII which has a corresponding rule in this Code has been amended or repealed by the Secretary of the Interior or modified or struck down by a court with jurisdiction over OSM's rules.
- (b) The petition shall set forth a concise statement of the facts, technical justification, and law which require issuance, amendment, or repeal of a rule under the Act and shall indicate whether the petitioner desires a public hearing.
- (c) Upon receipt of a petition, the Commission shall determine if the petition sets forth facts, technical justification and law which may provide a reasonable basis for issuance, amendment or repeal of a rule. Facts, technical justification or law previously considered in a petition for rulemaking on the same issue shall not provide a reasonable basis. If the Commission determines that the petition has a reasonable basis, a notice shall be published in a newspaper of general circulation in the State, seeking comments from the public on the proposed change. The Commission may hold a public hearing and may conduct an investigation or take other action to determine whether the petition should be granted.
- (d) Within ninety (90) days from receipt of the petition, the Commission shall issue a written decision either granting or denying the petition which shall constitute the final decision of the Commission.
 - (1) If the petition is granted, the Commission shall initiate a rulemaking proceeding pursuant to Sections 27 and 28 of the Act by publishing a notice in a newspaper of general circulation in the State, and in the Arkansas Register and shall send a copy of such notice to the petitioner, and all persons who commented upon the petition, seeking comments upon the proposed rule, modification, or amendment.
 - (2) If the petition is denied, the Commission shall notify the petitioner in writing, setting forth the reasons for denial and shall send a copy to all persons who commented upon the petition.
- (e) If the Commission determines that a public hearing should be held or if an interested person who has submitted written comments on the proposed rule requests a public hearing within ten (10) days after receipt of his comments by the Commission, the Commission shall hold a public hearing and shall give prior notice of

the time, date, and place of such hearing in a newspaper of general circulation in the State, in the Arkansas Register, and by mailing a copy of such notice to all persons who have submitted comments to the Commission.

SECTION 700.13

NOTICE OF CITIZEN SUITS

5-29-80

- (a) A person who intends to initiate a civil action on his or her own behalf under Section 32 of the Act shall give sixty (60) days notice of his intent to do so in accordance with the rules of this section; except that such action may be brought immediately after such notification in the case when the violation of the order complained of constitutes an imminent threat to the health or safety of the plaintiff, or would immediately affect a legal interest of the plaintiff.
- (b) Notice shall be given by certified mail to the Commission Chairman and the Director in all cases.
- (c) Notice shall be given by certified mail to the alleged violator if the complaint alleges a violation of the Act or any rule, order, or permit issued under the Act.
- (d) Service of notice under this section is complete upon mailing to the last known address of the person being notified.
- (e) A person giving notice regarding an alleged violation of the Act or any rules, order, or permit issued under the Act shall state, to the extent known:
 - (1) Sufficient information to enable the recipient to identify the provision of the Act, rule, order, or permit allegedly violated;
 - (2) The act or omission alleged to constitute a violation;
 - (3) The name, address, and telephone numbers of the person or persons responsible for the alleged violation;
 - (4) The date, time, and location of the alleged violation;
 - (5) The name, address, and telephone number of the person giving notice; and
 - (6) The name, address, and telephone number of legal counsel, if any, of the person giving notice.
- (f) A person giving notice of an alleged failure by the Commission, Director, or Division to

perform a mandatory act or duty under the Act shall state, to the extent known:

- (1) The provision of the Act containing the mandatory act or duty allegedly not performed;
- (2) Sufficient information to enable the recipient to identify the omission alleged to constitute the failure to perform a mandatory act or duty under the Act;
- (3) The name, address, and telephone number of the person giving notice; and
- (4) The name, address, and telephone number of legal counsel, if any, person giving notice.

SECTION 700.14 AVAILABILITY OF RECORDS

5-29-80

- (a) Records required by the Act to be made available locally to the public shall be retained at the central office of the Division.
- (b) Other records or documents in the possession of the Division may be requested under the Freedom of Information Act [Ark. Acts, Act 93 of 1967, as amended, Ark. Stat. Ann. 12-2801 et seq.].

SECTION 700.15 COMPUTATION OF TIME

5-29-80

- (a) Except as otherwise provided, computation of time under this Chapter is based on calendar days.
- (b) In computing any period of prescribed time, the day on which the designated period of time begins is not included. The last day of the period is included unless it is a Saturday, Sunday, or legal holiday on which the Division is not open for business, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.
- (c) Intermediate Saturdays, Sundays, and legal holidays are excluded from the computation when the period of prescribed time is seven (7) days or less.

- (a) No person shall discharge, or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has filed, instituted, or caused to be filed or instituted any proceeding under the Act, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of the Act.
- (b) Any employee or a representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may within thirty (30) days after such alleged violation occurs, apply to the Commission for a review of such firing or alleged discrimination. A copy of the application shall be sent to the person or operator who will be the respondent. Upon receipt of such application, the Director shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for an adjudicatory public hearing at the request of any party to such review to enable the parties to present information relating to the alleged violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be held in accordance with Section 29 of the Act. If a violation did occur, an order will be entered requiring the party committing the violation to take such affirmative action to abate the violation as is deemed appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. Orders issued by the Secretary under this subsection shall be subject to judicial review in accordance with Section 30 of the Act.

PART 701 -- STATE PROGRAM

SECTION

701.1	Scope
701.2	Objective
701.5	Definitions
701.11	Applicability

SECTION 701.1 SCOPE

5-29-80

- (a) This Part provides general introductory material for the State program required by the Act.
- (b) The following rules apply to the State program:
 - (1) Subchapter F on criteria for designating lands unsuitable for surface coal mining operations and the process for designating these lands or withdrawing the designation by the Commission.
 - (2) Subchapter G on the process for application, approval, denial, revision, and renewal of permits for surface coal mining and reclamation operations, including the small operator assistance program, requirements for special categories of these operations, and requirements for coal exploration;
 - (3) Subchapter J on public liability insurance and performance bonds or other assurances of performance for surface coal mining and reclamation operations;
 - (4) Subchapter K on performance standards which apply to coal exploration, surface coal mining and reclamation operations, and special categories of these operations;
 - (5) Subchapter L on inspection and enforcement responsibilities and civil penalties; and
 - (6) Subchapter M on the training, examination, and certification of blasters.

SECTION 701.2 OBJECTIVE

5-29-80

The rules in this Part give –

- (a) A general overview of the State program to be implemented by the Commission, Division and Director;

- (b) The applicability of that program to coal exploration and surface coal mining and reclamation operations; and
- (c) The definitions that apply to the rule of coal exploration and surface coal mining and reclamation operations.

SECTION 701.5

DEFINITIONS

5-27-99

As used in this Chapter, the following terms have the specified meanings, except where otherwise indicated:

Acid drainage means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, discharged from an active, inactive or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.

Acid-forming materials means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

Adjacent area means land located outside the affected area or permit area, depending on the context in which adjacent area is used, where air, surface or ground water, fish, wildlife, vegetation or other resources protected by the Act may be adversely impacted by surface coal mining and reclamation operations.

Affected area means, with respect to surface mining activities, any land or water upon or in which those activities are conducted or located. With respect to underground mining activities, affected area means:

- (a) any water or surface land upon or in which those activities are conducted or located;
- (b) and land or water which is located above underground mine workings.

Agricultural use means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.

Applicant means any person seeking a permit from the Director to conduct surface coal mining and reclamation operations pursuant to the State program.

Approximate original contour means that surface configuration achieved by backfilling and grading of the mined areas so that there claimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and

complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles and coal refuse piles eliminated. Permanent water impoundments may be permitted where the Director has determined that they comply with Sections 816.49, 816.56, and 816.133.

Aquifer means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specific use.

Auger mining means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface.

Best technology currently available means equipment, devices, systems, methods, or techniques which will (a) prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event result in contributions of suspended solids in excess of requirements set by applicable State or Federal laws; and (b) minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the Director, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with Part 816. Within the constraints of the State program, the Director shall have the discretion to determine the best technology currently available on a case-by-case basis, as authorized by the Act and this Chapter.

Coal exploration means the field gathering of:

- (a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or
- (b) The gathering of environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of this Chapter.

Coal mine waste means coal processing waste and underground development waste.

Coal processing plant means a collection of facilities where run-of-the-mine coal is subjected to chemical or physical processing or the cleaning, concentrating, or other processing or preparation. The processing plant may consist of, 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; coal processing and other waste disposal areas; roads, railroads and other transport facilities.

Coal processing waste means earth materials which are separated and wasted from the product coal during cleaning, concentrating, or other processing or preparation of coal.

Combustible material means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

Compaction means increasing the density of a material by reducing the voids between the particles and is generally accomplished by controlled placement and mechanical effort such as from repeated application of wheel, track, or roller loads from heavy equipment.

Cropland means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

Cumulative impact area means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on the surface- and ground-water systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond releases of:

- (a) The proposed operation,
- (b) All existing operations,
- (c) Any operation for which permit application has been submitted to the Division, and
- (d) All operations required to meet diligent development requirements for leased Federal coal for which there is actual mine development information available.

Disturbed area means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as disturbed until reclamation is complete and the performance bond or other assurance of performance required by Subchapter J of this Chapter is released.

Diversion means a channel, embankment, or other manmade structure constructed to divert water from one area to another.

Downslope means the land surface between the projected outcrop of the lowest coal bed being mined along each highwall and a valley floor.

Drinking, domestic or residential water supply means water received from a well or spring and any appurtenant delivery system that provides water for direct human consumption or household use. Wells and springs that serve only agricultural, commercial or industrial enterprises are not included except to the extent the water supply is for direct human consumption or human sanitation, or domestic use.

Embankment means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

Ephemeral stream means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

Excess spoil means spoil material disposed of in a location other than the mined-out area, provided that spoil material used to achieve the approximate original contour or to blend the mined-out area with the surrounding terrain in non-slope areas shall not be considered excess spoil.

Existing structure means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations for which construction begins prior to the approval of the State program.

Fugitive dust means that particulate matter not emitted from a duct or stack which becomes airborne due to the forces of wind or surface coal mining and reclamation operations or both. During surface coal mining and reclamation operations it may include emissions from haul roads; wind erosion of exposed surfaces, storage piles, and spoil piles; reclamation operations; and other activities in which material is either removed, stored, transported, or redistributed.

Groundwater means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

Half-shrub means a perennial plant with a woody base whose annually produced stems die back each year.

Head-of-hollow fill means a fill structure consisting of any material, other than coal processing waste and organic material, placed in the uppermost reaches of a hollow where side slopes of the existing hollow measured at the steepest point are greater than 20 degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than 10 degrees. In fills with less than 250,000 cubic yards of material, associated with contour mining, the top surface of the fill will be at the elevation of the coal seam. In all other head-of-hollow fills, the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill draining into the fill area.

Highwall means the face of exposed overburden and coal in an open cut of a surface coal mining activity or for entry to underground mining activities.

Historically used for cropland means (1) lands that have been used for cropland for any 5 years or more out of the 10 years immediately preceding the acquisition, including purchase, lease or option, of the land for the purpose of conducting or allowing through resale, lease or option the conduct of surface coal mining and reclamation operations; (2) lands that the Director determines, on the basis

of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but falls outside the specific 5-years-in-10 criterion, in which case the rules for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved; or (3) lands that would likely have been used as cropland for any 5 out of the last 10 years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.

Hydrologic balance means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage.

Hydrologic regime means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

Imminent danger to the health and safety of the public means the existence of any condition or practice, or any violation of a permit or other requirements of the Act in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

Impounding structure means a dam, embankment or other structure used to impound water, slurry, or other liquid or semi-liquid material.

Impoundment means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

In situ processes means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

Intermittent stream means – (a) A stream or reach of a stream that drains a watershed of at least one square mile, or (b) A stream or reach of a stream that is below the local water table for a least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

Land use means specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur. Changes of land use or uses from one of the following categories to another shall be considered as a change to an alternative land use which is subject to approval by the Director.

- (a) Cropland means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to or an integral part of these operations is also included for purposes of these land use categories.
- (b) Pastureland or land occasionally cut for hay. Land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. Land used for facilities in support of pastureland or land occasionally cut for hay which is adjacent to or an integral part of these operations is also included.
- (c) Grazingland. Includes both grasslands and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production. Land used for facilities in support of ranching operations which are adjacent to or an integral part of these operations is also included.
- (d) Forestry. Land used or managed for the long-term production of wood, wood fiber, or wood derived products. Land used for facilities in support of forest harvest and management operations which is adjacent to or an integral part of these operations is also included.
- (e) Residential. Includes single-and multiple-family housing, mobile home parks, and other residential lodgings. Land used for facilities in support of residential operations which is adjacent to or an integral part of these operations is also included. Support facilities include, but are not limited to, vehicle parking and open space that directly relates to the residential use.
- (f) Industrial/Commercial. Land used for – (1) Extraction or transformation of materials for fabrication of products, wholesaling of products or for long-term storage of products. This includes all heavy and light manufacturing facilities such as lumber and wood processing, chemical manufacturing, petroleum refining, and fabricated metal products manufacture. Land used for facilities in support of these operations which is adjacent to or an integral part of that operation is also included. Support facilities include, but are not limited to, all rail, road, and other transportation facilities (2) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments. Land used for facilities in support of commercial operations which is adjacent to or an integral part of these operations is also included. Support facilities include, but are not limited to, parking, storage or shipping facilities.
- (g) Recreation. Land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

- (h) Fish and wildlife habitat. Land dedicated wholly or partially to the production, protection or management of species of fish or wildlife.
- (i) Developed water resources. Includes land used for storing water for beneficial uses such as stock ponds, irrigation, fire protection, flood control, and water supply.
- (j) Undeveloped land or no current use or land management. Land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

Lands eligible for reining means those lands that would otherwise be eligible for expenditures under Section 6 of the Act.

Material damage, in the context of Sections 784.20 and 816.121-U of this Chapter, means:

- (a) Any functional impairment of surface lands, features, structures, or facilities;
- (b) Any physical change that has a significant adverse impact on the affected lands's capability to support any current or reasonable foreseeable uses or causes significant loss in production or income; or
- (c) Any significant change in the condition, appearance or utility of any structure or facility from its pre-subsidence condition.

Moist bulk density means the weight of soil (oven dry) per unit volume. Volume is measured when the soil is at field moisture capacity (1/3 bar moisture tension). Weight is determined after drying the soil for 24 hours at 105 degrees C.

Mulch means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth.

Non-commercial building means any building, other than an occupied residential dwelling, that, at the time the subsidence occurs, is used on a regular or temporary basis as a public building or community or institutional building as those terms are defined in Section 761.5 of this Chapter. Any building used only for commercial agricultural, industrial, retail or other commercial enterprises is excluded.

Noxious plants means species that have been included on official State lists of noxious plants for Arkansas.

Occupied residential dwelling and structures related thereto means, for purposes of Sections 784.20 and 816.121-U, any building or other structure that, as the time the subsidence occurs, is used either

temporarily, occasionally, seasonally, or permanently for human habitation. This term also includes any building, structure or facility installed on, above or below, or a combination thereof, the land surface if that building, structure or facility is adjunct to or used in connection with an occupied residential dwelling. Examples of such structures include, but are not limited to, garages; storage sheds and barns; greenhouses and related buildings; utilities and cables; fences and other enclosures; retaining walls; paved or improved patios, walks and driveways; septic sewage treatment facilities; and lot drainage and lawn and garden irrigation systems. Any structure used only for commercial agricultural, industrial, retail or other commercial purposes is excluded.

Operator means any person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth or from coal refuse piles by mining within 12 consecutive calendar months in any one location.

Outslope means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

Overburden means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

Perennial stream means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground-water discharge or surface runoff. The term does not include intermittent stream or ephemeral stream.

Performance bond means a surety bond, collateral bond or self-bond or a combination thereof, by which a permittee assures faithful performance of all the requirements of the Act, this Chapter, the State program, and the requirements of the permit and reclamation plan.

Permanent diversion means a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention by the Director and other appropriate State and Federal agencies.

Permanent impoundment means an impoundment which is approved by the Division and, if required, by other State and Federal agencies for retention as part of the post mining land use.

Permit means a permit to conduct surface coal mining and reclamation operations issued by the Director pursuant to the State program, or pursuant to a cooperative agreement where one has been executed.

Permit area means the area of land and water within the boundaries of the permit which are designated on the permit application maps, as approved by the Director. This area shall include, at a minimum, all areas which are or will be affected by the surface coal mining and reclamation operations during the term of the permit.

Permittee means a person holding or required by the Act or this Chapter to hold a permit to conduct surface coal mining and reclamation operations issued by the Director pursuant to this program or pursuant to a cooperative agreement where one has been executed.

Precipitation event means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a limited period of time. It may be expressed in terms of recurrence interval. As used in these rules, precipitation event also includes that quantity of water emanating from snow cover as snow-melt in a limited period of time.

Previously mined area means land affected by surface coal mining operations prior to August 3, 1977, that has not been reclaimed to the standards of 30 CFR Chapter VII and the Code.

Prime farmland means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 (Federal Register Vol. 4 No. 21) and which have historically been used for cropland as that phrase is defined above.

Rangeland means land on which the natural potential (climax) plant cover is principally native grasses, forbs, and shrubs valuable for forage. This land includes natural grasslands and savannahs, such as prairies, and juniper savannahs, such as brushlands. Except for brush control, management is primarily achieved by regulating the intensity of grazing and season of use.

Recharge capacity means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

Reclamation means those actions taken to restore mined land as required by this Chapter to a postmining land use approved by the Director.

Recurrence interval means the interval of time in which a precipitation event is expected to occur once, on the average. For example, the 10-year 24-hour precipitation event would be that 24-hour precipitation event expected to occur on the average once in 10 years.

Reference area means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity and plant species diversity that are produced naturally or by crop production methods approved by the Director. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

Refuse pile means a surface deposit of coal mine waste that does not impound water, slurry, or other liquid or semi-liquid material.

Renewable resource lands means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazinglands.

Replacement of water supply means, with respect to protected water supplies contaminated, diminished, or interrupted by coal mining operations, provision of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies.

- (a) Upon agreement by the permittee and the water supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one-time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the permittee and the water supply owner.
- (b) If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If the latter approach is selected, written concurrence must be obtained from the water supply owner.

Road means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface, and such contiguous appendages as are necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways used for part of the road construction procedure and promptly replaced by a primary or ancillary road located in the identical right-of-way as the pioneer or construction roadway. The term also excludes any roadway within the immediate mining pit area.

Safety factor means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

Sedimentation pond means a primary sediment control structure designed, constructed and maintained in accordance with Section 816.46 and including, but not limited to a barrier, dam, or excavated depression which slows down water runoff to allow sediment to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, rip rap, check dams, mulches, dugouts and other measures that reduce overland flow velocity, reduce runoff volume or trap sediment, to the extent that such secondary sedimentation structures drain to a sedimentation pond.

Significant, imminent environmental harm to land, air or water resources means –

- (a) An environmental harm is an adverse impact on land, air, or water resources which

resources include, but are not limited to, plant and animal life.

- (b) An environmental harm is imminent, if a condition, practice or violation exists which –
 - (1) Is causing such harm; or
 - (2) May reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under Section 23 of the Act.
- (c) An environmental harm is significant if that harm is appreciable and not immediately reparable.

Siltation structure means a sedimentation pond, a series of sedimentation ponds, or other treatment facility.

Slope means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v:5h). It may also be expressed as a percent or in degrees.

Soil Horizons means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The three major soil horizons are

- (a) A horizon. The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.
- (b) B horizon. The layer that typically is immediately beneath the A horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A or C horizons.
- (c) C horizon. The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

Soil Survey means a field and other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the National Cooperative Soil Survey as incorporated by reference in Section 785.17(b)(1).

Spoil means overburden that has been removed during surface coal mining operations.

Stabilize means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

State Program means a program established by the Division and approved by the Secretary of the Interior pursuant to Public Law 95-87, Section 503 to regulate surface mining and reclamation operations on lands within the State. If a cooperative agreement under 30 CFR 745 has been executed, the State program may apply to Federal lands, in accordance with the terms of the agreement.

Steep slope means any slope of more than 20 degrees or such lesser slope as may be designated by the Director after consideration of soil, climate, and other characteristics of a region or State.

Substantially disturb means, for purposes of coal exploration, to significantly impact land or water resources by blasting; by removal of vegetation, topsoil, or overburden; by construction of roads or other access routes; by placement of excavated earth or waste material on the natural land surface or by other such activities; or to remove more than 250 tons of coal.

Surface mining activities means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam, before recovering the coal, by auger coal mining, or by recovery of coal from a deposit that is not in its original geologic location.

Suspended solids or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the Environmental Protection Agency's regulations for waste water and analyses (40 CFR 136).

Temporary diversion means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and not approved by the Director to remain after reclamation as part of the approved postmining land use.

Temporary impoundment means an impoundment used during surface coal mining and reclamation operations, but not approved by the Division to remain as part of the approved postmining land use.

Topsoil means the A soil horizon layer of the three major soil horizons.

Toxic-forming materials means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

Toxic mine drainage means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

Unanticipated event or condition, as used in Section 786.17 of this Chapter, means an event or condition related to prior mining activity which arises from a surface coal mining and reclamation operation on lands eligible for remining and was not contemplated by the applicable permit.

Underground development waste means waste rock mixtures of coal, shale, claystone, siltstone, sandstone, limestone, or related materials that are excavated, moved, and disposed of from underground workings in connection with underground mining activities.

Underground mining activities means a combination of – (a) surface operations incident to underground extraction of coal or in situ processing, such as construction, use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, shipping areas, hoist and ventilating ducts, areas utilized for the disposal and storage of waste, and areas on which materials incident to underground mining operations are placed; and (b) underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities, in situ processing, and underground mining, hauling, storage, and blasting.

Valley fill means a fill structure consisting of any material other than coal waste and organic material that is placed in a valley where side slopes of the existing valley measured by the steepest point are greater than 20 degrees or the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than 10 degrees.

Water table means the upper surface of a zone of saturation, where the body of groundwater is not confined by an overlying impermeable zone.

SECTION 701.11 APPLICABILITY

10-29-92

- (a) Any person who conducts surface coal mining and reclamation operations on non-Federal lands on or after eight (8) months from the date of approval of the State program shall have a permit issued pursuant to the State program. However, under conditions specified in Section 771.13, a person may continue operations under a previously issued permit after eight (8) months from the date of approval of the State program.
- (b) The requirements of Subchapter K of this Chapter shall be effective and shall apply to each surface coal mining and reclamation operation which is required to obtain a permit under the Act, on the earliest date upon which the Act and this Chapter require a permit to be obtained, except as provided in Paragraph (c) of this Section.
- (c)
 - (1) Each structure used in connection with or to facilitate a coal exploration or surface coal mining and reclamation operation shall comply with the performance standards and the design requirements of Subchapter K of this Chapter, except

that -

- (i) An existing structure which meets the performance standards of Subchapter K of this Code but does not meet the design requirements of Subchapter K of this Code may be exempted from meeting those design requirements by the Director. The Director shall grant this exemption on non-Federal lands only as part of the permit application process after obtaining the information required by Section 780.12 or 784.12 and after making the findings required in Section 786.21.
 - (ii) If the applicable interim performance standard is at least as stringent as the comparable performance standard of Subchapter K of this Code an existing structure which meets the applicable performance standards of the interim program may be exempted by the Director from meeting the design requirements of Subchapter K of this Code. The Director shall grant this exemption on non-Federal lands only as part of the permit application process after obtaining the information required by Section 780.12 or 784.12 and after making the findings required in Section 786.21.
 - (iii) An existing structure which meets an applicable interim performance standard which is less stringent than the comparable performance standards of Subchapter K of this Chapter or which does not meet a performance standard of Subchapter K of this Code for which there was no equivalent performance standard in the interim program shall be modified or reconstructed to meet the design standard of Subchapter K of this Code pursuant to a compliance plan approved by the Director on non-Federal lands only as part of the permit application as required in Section 780.12 or 784.12 and according to the findings required by Section 786.21.
 - (iv) An existing structure which does not meet the applicable interim performance standards and which the applicant proposes to use in connection with or to facilitate the coal exploration or surface coal mining and reclamation operation shall be modified or reconstructed to meet the design standards of Subchapter K prior to issuance of the permit.
- (2) The exemptions provided in Paragraph (c)(1)(i) and (c)(1)(ii) shall not apply to:
- (i) The requirements for existing and new waste piles used either temporarily or permanently as dams or embankments; and
 - (ii) The requirements to restore the approximate original contour of the land.

(d)

- (1) Any person conducting coal exploration on non-Federal lands on or after the date on which the State program is approved, shall either file a notice of intention to explore or obtain approval of the Director as required by Part 776.
- (2) Coal exploration performance standards in Part 815 shall apply to coal exploration on non-Federal lands which substantially disturbs the natural land surface two (2) months after the approval of the State program.

PART 702 -- EXEMPTION FOR COAL EXTRACTION INCIDENTAL TO THE
EXTRACTION OF OTHER MINERALS

SECTION

702.1	Scope
702.5	Definitions
702.11	Application Requirements and Procedures
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SECTION 702.1 SCOPE

6-03-92

This part implements the exemption contained in Section 34 of the Act concerning the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 2/3 percent of the total tonnage of coal and other minerals removed for purposes of commercial use or sale.

SECTION 702.5 DEFINITIONS

6-03-92

As used in this part, the following terms have the meanings specified, except where otherwise indicated:

- (a) *Cumulative measurement period* means the period of time over which both cumulative production and cumulative revenue are measured.
 - (1) For purposes of determining the beginning of the cumulative measurement period, subject to the Director's approval, the operator must select and consistently use one of the following:
 - (i) For mining areas where coal or other minerals were extracted prior to August 3, 1977, the date extraction of coal or other minerals commenced at that mining area or August 3, 1977, or
 - (ii) For mining areas where extraction of coal or other minerals commenced on or after August 3, 1977, the date extraction of coal or other minerals commenced at that mining area, whichever is earlier.

- (2) For annual reporting purposes pursuant to Section 702.18 of this part, the end of the period for which cumulative production and revenue is calculated is either,
 - (i) For mining areas where coal or other minerals were extracted prior to September 1, 1992, August 31, 1992 and every August 31 thereafter;
 - (ii) For mining areas where extraction of coal or other minerals commenced on or after September 1, 1992, the last day of the calendar quarter during which coal extraction commenced, and each anniversary of that day thereafter.
- (b) *Cumulative production* means the total tonnage of coal or other minerals extracted from a mining area during the cumulative measurement period. The inclusion of stockpiled coal and other mineral tonnages in this total is governed by Section 702.16.
- (c) *Cumulative revenue* means the total revenue derived from the sale of coal or other minerals and the fair market value of coal or other minerals transferred or used, but not sold, during the cumulative measurement period.
- (d) *Mining area* means an individual excavation site or pit from which coal, other minerals and overburden are removed.
- (e) *Other minerals* means any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste and fill material.

SECTION 702.11 APPLICATION REQUIREMENTS AND PROCEDURES

6-03-92

- (a)
 - (1) Any person who plans to commence or continue coal extraction after September 1, 1992 in reliance on the incidental mining exemption shall file a complete application for exemption with the Division for each mining area.
 - (2) Following incorporation of an exemption application approval process into the State program, a person may not commence coal extraction based upon the exemption until the Director approves such an application, except as provided in paragraph (e)(3) of this section.
- (b) Existing operations. Any person who has commenced coal extraction at a mining area in reliance upon the incidental mining exemption prior to September 1, 1992 may continue mining operations for 60 days after such effective date. Coal extraction may not continue

after such 60-day period unless that person files an administratively complete application for exemption with the Division. If an administratively complete application is filed within 60 days, the person may continue extracting coal in reliance on the exemption beyond the 60-day period until the Director makes an administrative decision on such application.

- (c) Additional information. The Director shall notify the applicant if the application for exemption is incomplete and may at any time require submittal of additional information.
- (d) Public comment period. Following publication of the newspaper notice required by Section 702.12(i), the Director shall provide a period of no less than 30 days during which time any person having an interest which is or may be adversely affected by a decision on the application may submit written comments or objections.
- (e) Exemption determination.
 - (1) No later than 90 days after filing of an administratively complete application, the Director shall make a written determination whether, and under what conditions, the persons claiming the exemption are exempt under this part, and shall notify the applicant and persons submitting comments on the application of the determination and the basis for the determination.
 - (2) The determination of exemption shall be based upon information contained in the application and any other information available to the Director at that time.
 - (3) If the Director fails to provide an applicant with the determination as specified in paragraph (e)(1) of this section, an applicant who has not begun may commence extraction pending a determination on the application unless the Director issues an interim finding, together with reasons therefor, that the applicant may not begin coal extraction.
- (f) Administrative review.
 - (1) Any adversely affected person may request administrative review of a determination under paragraph (e) of this section within 30 days of the notification of such determination in accordance with procedures established under Section 29 of the Act.
 - (2) A petition for administrative review filed under Section 29 of the Act shall not suspend the effect of a determination under paragraph (e) of this section.

An application for exemption shall include at a minimum:

- (a) The name and address of the applicant;
- (b) A list of the minerals sought to be extracted;
- (c) Estimates of annual production of coal and other minerals within each mining area over the anticipated life of the mining operation;
- (d) Estimated annual revenues to be derived from bona fide sales of coal and other minerals to be extracted within the mining area;
- (e) Where coal or the other minerals are to be used rather than sold, estimated annual fair market values at the time of projected use of the coal and other minerals to be extracted from the mining area;
- (f) The basis for all annual production, revenue, and fair market value estimates;
- (g) A description, including county, township, if any, and boundaries of the land, of sufficient certainty that the mining areas may be located and distinguished from other mining areas;
- (h) An estimate to the nearest acre of the number of acres that will compose the mining area over the anticipated life of the mining operation;
- (i) Evidence of publication, in a newspaper of general circulation in the county of the mining area, of a public notice that an application for exemption has been filed with the Division (The public notice must identify the persons claiming the exemption and must contain a description of the proposed operation and its locality that is sufficient for interested persons to identify the operation.);
- (j) Representative stratigraphic cross-section(s) based on test borings or other information identifying and showing the relative position, approximate thickness and density of the coal and each other mineral to be extracted for commercial use or sale and the relative position and thickness of any material, not classified as other minerals, that will also be extracted during the conduct of mining activities;
- (k) A map of appropriate scale which clearly identifies the mining area;
- (l) A general description of mining and mineral processing activities for the mining area;

- (m) A summary of sales commitments and agreements for future delivery, if any, which the applicant has received for other minerals to be extracted from the mining area, or a description of potential markets for such minerals;
- (n) If the other minerals are to be commercially used by the applicant, a description specifying the use;
- (o) For operations having extracted coal or other minerals prior to filing an application for exemption, in addition to the information required above, the following information must also be submitted:
 - (1) Any relevant documents the operator has received from the Division documenting its exemption from the requirements of the Act;
 - (2) The cumulative production of the coal and other minerals from the mining area; and
 - (3) Estimated tonnages of stockpiled coal and other minerals; and
- (p) Any other information pertinent to the qualification of the operation as exempt.

SECTION 702.13

PUBLIC AVAILABILITY OF INFORMATION

6-03-92

- (a) Except as provided in paragraph (b) of this section, all information submitted to the Division under this part shall be made immediately available for public inspection and copying at the local offices of the Division having jurisdiction over the mining operations claiming exemption until at least three years after expiration of the period during which the subject mining area is active.
- (b) The Director may keep information submitted to the Division under this part confidential if the person submitting it requests in writing, at the time of submission, that it be kept confidential and the information concerns trade secrets or is privileged commercial or financial information which relates to the competitive rights of the persons intending to conduct operations under this part.
- (c) Information requested to be held as confidential under paragraph (b) of this section shall not be made publicly available until after notice and opportunity to be heard is afforded persons both seeking and opposing disclosure of this information.

- (a) Activities are exempt from the requirements of the Act if all of the following are satisfied:
- (1) The cumulative production of coal extracted from the mining area determined annually as described in this paragraph does not exceed $16 \frac{2}{3}$ percent of the total cumulative production of coal and other minerals removed during such period for purposes of bona fide sale or reasonable commercial use.
 - (2) Coal is produced from a geological stratum lying above or immediately below the deepest stratum from which other minerals are extracted for purposes of bona fide sale or reasonable commercial use.
 - (3) The cumulative revenue derived from the coal extracted from the mining area determined annually shall not exceed 50 percent of the total cumulative revenue derived from the coal and other minerals removed for purposes of bona fide sale or reasonable commercial use. If the coal extracted or minerals removed are used by the operator or transferred to a related entity for use instead of being sold in a bona fide sale, then the fair market value of the coal or other minerals shall be calculated at the time of use or transfer and shall be considered rather than revenue.
- (b) Persons seeking or that have obtained an exemption from the requirements of the Act shall comply with the following:
- (1) Each other mineral upon which an exemption under this part is based must be a commercially valuable mineral for which a market exists or which is mined in bona fide anticipation that a market will exist for the mineral in the reasonably foreseeable future, not to exceed twelve months from the end of the current period for which cumulative production is calculated. A legally binding agreement for the future sale of other minerals is sufficient to demonstrate the above standard.
 - (2) If either coal or other minerals are transferred or sold by the operator to a related entity for its use or sale, the transaction must be made for legitimate business purposes.

SECTION 702.15

CONDITIONS OF EXEMPTION AND RIGHT OF
INSPECTION AND ENTRY

6-03-92

A person conducting activities covered by this part shall:

- (a) Maintain on-site or at other locations available to authorized representatives of the Director and the Secretary information necessary to verify the exemption including, but not limited to, commercial use and sales information, extraction tonnages, and a copy of the exemption application and exemption approved by the Director;
- (b) Notify the Director upon the completion of the mining operation or permanent cessation of all coal extraction activities; and
- (c) Conduct operations in accordance with the approved application or when authorized to extract coal under Section 702.11(b) or Section 702.11(e)(3) prior to submittal or approval of an exemption application, in accordance with the standards of this part.
- (d) Authorized representatives of the Director and the Secretary shall have the right to conduct inspections of operations claiming exemption under this part.
- (e) Each authorized representative of the Director and the Secretary conducting an inspection under this part:
 - (1) Shall have a right of entry to, upon, and through any mining and reclamation operations without advance notice or a search warrant, upon presentation of appropriate credentials;
 - (2) May, at reasonable times and without delay, have access to and copy any records relevant to the exemption; and
 - (3) Shall have a right to gather physical and photographic evidence to document conditions, practices, or violations at a site.
- (f) No search warrant shall be required with respect to any activity under paragraphs (d) and (e) of this section, except that a search warrant may be required for entry into a building.

SECTION 702.16

STOCKPILING OF MINERALS

6-03-92

- (a) *Coal.* Coal extracted and stockpiled may be excluded from the calculation of cumulative production until the time of its sale, transfer to a related entity or use;

- (1) Up to an amount equaling a 12-month supply of the coal required for future sale, transfer or use as calculated based upon the average annual sales, transfer or use from the mining area over the two preceding years; or
 - (2) For a mining area where coal has been extracted for a period of less than two years, up to an amount that would represent a 12-month supply of the coal required for future sales, transfer or use as calculated based on the average amount of coal sold, transferred or used each month.
- (b) *Other minerals.*
- (1) The Director shall disallow all or part of an operator's tonnages of stockpiled other minerals for purposes of meeting the requirements of this part if the operator fails to maintain adequate and verifiable records of the mining area of origin, the disposition of stockpiles or if the disposition of stockpiles indicates the lack of commercial use or market for the minerals.
 - (2) The Director may only allow an operator to utilize tonnages of stockpiled other minerals for purposes of meeting the requirements of this part if:
 - (i) The stockpiling is necessary to meet market conditions or is consistent with generally accepted industry practices; and
 - (ii) Except as provided in paragraph (b)(3) of this section, the stockpiled other minerals do not exceed a 12-month supply of the mineral required for future sales as approved by the Director on the basis of the exemption application.
 - (3) The Director may allow an operator to utilize tonnages of stockpiled other minerals beyond the 12-month limit established in paragraph (b)(2) of this section if the operator can demonstrate to the Director's satisfaction that the additional tonnage is required to meet future business obligations of the operator, such as may be demonstrated by a legally binding agreement for future delivery of the minerals.
 - (4) The Director may periodically revise the other mineral stockpile tonnage limits in accordance with the criteria established by paragraphs (b)(2) and (3) of this section based on additional information available to the Director.

- (a) Director's responsibility. The Director shall conduct an annual compliance review of the mining area, utilizing the annual report submitted pursuant to Section 702.18, an on-site inspection and any other information available to the Director.
- (b) If the Director has reason to believe that a specific mining area was not exempt under the provisions of this part at the end of the previous reporting period, is not exempt, or will be unable to satisfy the exemption criteria at the end of the current reporting period, the Director shall notify the operator that the exemption may be revoked and the reason(s) therefor. The exemption will be revoked unless the operator demonstrates to the Director within 30 days that the mining area in question should continue to be exempt.
- (c)
 - (1) If the Director finds that an operator has not demonstrated that activities conducted in the mining area qualify for the exemption, the Director shall revoke the exemption and immediately notify the operators and intervenors. If a decision is made not to revoke an exemption, the Director shall immediately notify the operator and intervenors.
 - (2) Any adversely affected person may request administrative review of a decision whether to revoke an exemption within 30 days of the notification of such a decision in accordance with procedures established under Section 29 of the Act.
 - (3) A petition for administrative review filed under Section 29 of the Act shall not suspend the effect of a decision whether to revoke an exemption.
- (d) *Direct enforcement.*
 - (1) An operator mining in accordance with the terms of an approved exemption shall not be cited for violations of the State program which occurred prior to the revocation of the exemption.
 - (2) An operator who does not conduct activities in accordance with the terms of an approved exemption and knows or should know that such activities are not in accordance with the approved exemption shall be subject to direct enforcement action for violations of the State program which occur during the period of such activities.
 - (3) Upon revocation of an exemption or denial of an exemption application, an operator shall stop conducting surface coal mining operations until a permit is obtained and shall comply with the reclamation standards of the State program with regard to conditions, areas and activities existing at the time of revocation or denial.

- (a)
- (1) Following approval by the Director of an exemption for a mining area, the person receiving the exemption shall, for each mining area, file a written report annually with the Division containing the information specified in paragraph (b) of this section.
 - (2) The report shall be filed no later than 30 days after the end of the 12-month period as determined in accordance with the definition of "cumulative measurement period" in Section 702.5 of this part.
 - (3) The information in this report shall cover:
 - (i) Annual production of coal and other minerals and annual revenue derived from coal and other minerals during the preceding 12-month period, and
 - (ii) The cumulative production of coal and other minerals and the cumulative revenue derived from coal and other minerals.
- (b) For each period and mining area covered by the report, the report shall specify:
- (1) The number of tons of extracted coal sold in bona fide sales and total revenue derived from such sales;
 - (2) The number of tons of coal extracted and used or transferred by the operator or related entity and the estimated total fair market value of such coal;
 - (3) The number of tons of coal stockpiled;
 - (4) The number of tons of other commercially valuable minerals extracted and sold in bona fide sales and total revenue derived from such sales;
 - (5) The number of tons of other commercially valuable minerals extracted and used or transferred by the operator or related entity and the estimated total fair market value of such minerals; and
 - (6) The number of tons of other commercially valuable minerals removed and stockpiled by the operator.

PART 705 -- RESTRICTIONS ON FINANCIAL INTERESTS OF ENFORCEMENT
PERSONNEL

SECTION

705.1	Scope
705.2	Objectives
705.4	Responsibility
705.5	Definitions
705.6	Penalties
705.11	Who Shall File
705.13	When to File
705.15	Where to File
705.17	What to Report
705.18	Gifts and Gratuities
705.19	Resolving Prohibited Interests
705.21	Appeals Procedures

SECTION 705.1 SCOPE

5-29-80

This part sets forth the policies and procedures to implement Section 17 of the Act. Compliance with the policies and procedures in this part will satisfy the requirements of Section 17 of the Act. Section 17 prohibits certain employees of the Division

SECTION 705.2 OBJECTIVES

5-29-80

The objectives of this part are:

- (a) To adopt a standard program for implementing the provisions in Section 17 of the Act.
- (b) To establish methods which will ensure, as required by Section 17 of the Act, that each employee of the Division who performs any function or duty under the Act does not have a direct or indirect financial interest in any underground or surface coal mining operation.
- (c) To establish methods by which the provisions of Section 17 of the Act will be monitored and enforced.

(a) The Director shall:

- (1) Provide advice, assistance, and guidance to all State employees required to file statements pursuant to Section 705.11;
- (2) Promptly review the statement of employment and financial interests and supplements, if any, filed by each employee, to determine if the employee has correctly identified those listed employment and financial interests which constitute a direct or indirect financial interest in an underground or surface coal mining operation;
- (3) Resolve prohibited financial interest situations by ordering or initiating remedial action or by initiating action to impose the penalties of the Act;
- (4) Certify on each statement that review has been made, that prohibited financial interests, if any, have been resolved, and that no other prohibited interests have been identified from the statement;
- (5) Submit to the OSM Director such statistics and information as he or she may request to enable preparation of the required annual report to Congress;
- (6) Submit to the OSM Director the initial listing and the subsequent annual listings of positions as required by Section 705.11(b), (c) and (d);
- (7) Furnish a blank statement 45 days in advance of the filing date established by Section 705.13(a) to each State employee required to file a statement; and
- (8) Inform annually each State employee required to file a statement with the Director, or such other official designated by State law or rule, of the name, address, and telephone number of the person whom they may contact for advice and counseling.

(b) Division employees performing any duties or functions under the Act shall:

- (1) Have no direct or indirect financial interest in coal mining operations;
- (2) File a fully completed statement of employment and financial interest 120 days after these rules become effective or upon entrance to duty, and annually thereafter on the specified filing date; and

- (3) Comply with directives issued by persons responsible for approving each statement and comply with directives issued by those persons responsible for ordering remedial action.

SECTION 705.5 DEFINITIONS

5-29-80

Coal Mining Operation means the business of developing, producing, preparing or loading bituminous coal, sub-bituminous coal, anthracite, or lignite, or of reclaiming the areas upon which such activities occur.

Employee means any person employed by the Division who performs any function or duty under the Act, provided that, this definition shall not include any member of the Commission other than the Director.

Performing any function or duty under this Act means those decisions or actions, which if performed or not performed by an employee, affect the programs under the Act.

Direct Financial Interest means ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings and also means any other arrangement where the employee may benefit from his or her holding in or salary from coal mining operations. Direct financial interests include employment, pensions, creditor, real property and other financial relationships.

Indirect Financial Interest means the same financial relationships as for direct ownership, but where the employee reaps the benefits of such interests, including interests held by his or her spouse, minor child and other relatives, including inlaws, residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's functions or duties and the coal mining operation in which the spouse, minor children or other resident relatives hold a financial interest.

Prohibited Financial Interest means any direct or indirect financial interest in any coal mining operation.

SECTION 705.6 PENALTIES

5-29-80

- (a) Criminal penalties are imposed by Section 17(a) of the Act. Section 17(a) prohibits each employee of the Division who performs any function or duty under the Act from having a direct or indirect financial interest in any underground or surface coal mining operation. The Act provides that whoever knowingly violates the provisions of Section 17(a) shall, upon conviction, be punished by a fine of not more than \$2,500 or by imprisonment of not more than one (1) year, or by both.

- (b) Regulatory penalties are imposed by this part. Compliance with the financial interest requirements is a condition of employment for employees of the Division who perform any functions or duties under the Act. Accordingly, an employee who fails to file the required statement will be considered in violation of these intended employment provisions and will be subject to removal from his or her position.

SECTION 705.11

WHO SHALL FILE

11-14-89

- (a) Any employee who performs any function or duty under the Act is required to file a statement of employment and financial interest. Members of advisory boards and commissions established in accordance with State laws or rules to represent multiple interests, who perform a function or duty under the Act, must file a statement of employment and financial interests. An employee who occupies a position which has been determined by the Director not to involve performance of any function or duty under the Act or who is no longer employed by the Division at the time a filing is due, is not required to file a statement.
- (b) The Director shall prepare a list of those positions within the Division that do not involve performance of any functions or duties under the Act. The Division may be organized to include more activities than are covered by the Act. For example, since the State has identified the Division as the regulatory authority there may be only one or two offices within the Division which have employees who perform any functions, or duties under the Act. In those cases, the Director shall list the title of boards, offices, bureaus or divisions within the Division which do not perform any functions or duties under the Act and list the positions not performing functions or duties under the Act for only those boards, offices, bureaus or divisions that do have some employees performing functions or duties under the Act. Only those employees who are employed in a listed organizational unit or who occupy a listed position will be exempted from the filing requirements or Section 17 of the Act.
- (c) The Director shall prepare and submit to the OSM Director an initial listing of positions that do not involve performance of any functions or duties under the Act within 60 days of the effective date of these rules.
- (d) The Director shall annually review and update this listing. For monitoring and reporting reasons, the listing must be submitted to the OSM Director and must contain a written justification for inclusion of the positions listed . Proposed revisions or a certification that revision is not required shall be submitted to the OSM Director by no later than September 30, of each year. The Director may revise the listing by the addition or deletion of positions at any time he or she determines such revisions are required to carry out the purpose of the law or the rules of this part. Additions to and deletions from the listing of positions are effective upon notification to the incumbents of the positions added or deleted.

- (e) The Secretary of the Department of the Interior or the OSM Director may modify the listing at any time one or both of them determines that the listing submitted by the Director indicates that coverage is not sufficient to carry out the purpose of the law or the rules of this part.

SECTION 705.13

WHEN TO FILE

11-14-89

- (a) Employees and members of advisory boards and commissions representing multiple interest performing functions or duties under the Act shall file:
 - (1) Within 120 days of the effective date of these rules and;
 - (2) Annually on February 1 of each year.
- (b) New employees and new members of advisory boards and commissions representing multiple interests hired, appointed, or transferred to perform functions or duties under the Act will be required to file at the time of entrance to duty.
- (c) New employees and new members of advisory boards and commissions representing multiple interests are not required to file an annual statement on the subsequent annual filing date if this date occurs within two months after their initial statement was filed. For example, an employee entering duty on December 2, 1986 would file a statement on that date. Because December 2 is within two months of February 1 the employee would not be required to file his or her next annual statement until February 1, 1988.

SECTION 705.15

WHERE TO FILE

11-14-89

- (a) The Director shall file his or her statement with the OSM Director. All other employees and members of advisory boards and commissions representing multiple interests, as provided in 705.11, shall file their statements with the Director or such other official as may be designated by State law or rule.

- (a) Each employee shall report all information required on the statement of employment and financial interests of the employee, his or her spouse, minor children, or other relatives who are full time residents of the employee's home. The report shall be on a form provided by the Director. The statement consists of three major parts:
- (1) A listing of all financial interests, including employment, security, real property, creditor and other financial interests held during the course of the preceding year,
 - (2) A certification that none of the listed financial interests represent a direct or indirect financial interest in an underground or surface coal mining operation except as specifically identified and described by the employee as part of the certificate, and
 - (3) A certification by the reviewer that the form was reviewed, that prohibited interests have been resolved, and that no other prohibited interests have been identified from the statement.
- (b) Listing of all financial interests. The statement will set forth the following information regarding any financial interest:
- (1) Employment. Any continuing financial interests in business entities and nonprofit organizations through a pension or retirement plan, shared income, salary or other income arrangement as a result of prior or current employment. The employee, his or her spouse or other resident relative is not required to report a retirement plan from which he or she will receive a guaranteed income. A guaranteed income is one which is unlikely to be changed as a result of actions taken by the Division.
 - (2) Securities. Any financial interest in business entities and nonprofit organizations through ownership of stock, stock options, bonds, securities or other arrangements including trusts. An employee is not required to report holdings in widely diversified mutual funds, investment clubs or regulated investment companies not specializing in underground and surface coal mining operations.
 - (3) Real Property. Ownership, lease, royalty or other interests or rights in lands or minerals. Employees are not required to report lands developed and occupied for a personal residence.

- (4) Creditors. Debts owed to business entities and nonprofit organizations. Employees are not required to report debts owed to financial institutions (banks, savings and loan associations, credit unions, and the like) which are chartered to provide commercial or personal credit. Also excluded are charge accounts and similar short term debts for current and ordinary household and living expenses.
- (c) Employee certification, and, if applicable, a listing of exceptions.
- (1) The statement will provide for a signed certification by the employee that to the best of his or her knowledge,
- (i) None of the listed financial interests represent an interest in an underground or surface coal mining operation except as specifically identified and described as exceptions by the employee as part of the certificate, and
 - (ii) The information shown on the statement is true, correct, and complete.
- (2) An employee is expected to:
- (i) Have complete knowledge of his or her personal involvement in business enterprises such as a sole proprietorship and partnership, his or her outside employment and the outside employment of the spouse and other covered relatives, and
 - (ii) Be aware of the information contained in the annual financial statement or other corporate or business reports routinely circulated to investors or routinely made available to the public.
- (3) The exceptions shown in the employee certification of the form must provide enough information for the Director to determine the existence of a direct or indirect financial interest. Accordingly, the exceptions should:
- (i) List the financial interests;
 - (ii) Show the number of shares, estimated value or annual income of the financial interests; and
 - (iii) Include any other information which the employee believes should be considered in determining whether or not the interest represents a prohibited interest.
- (4) Employees are cautioned to give serious consideration to their direct and indirect financial interests before signing the statement of certification. Signing the

certification without listing known prohibited financial interests may be cause for imposing the penalties prescribed in Section 705.6(a).

SECTION 705.18 GIFTS AND GRATUITIES

5-29-80

- (a) Except as provided in paragraph (b) of this section, employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or any other thing of monetary value, from a coal company which:
 - (1) Conducts or is seeking to conduct operations or activities that are regulated by the Division; or
 - (2) Has interests that may be substantially affected by the performance or non-performance of the employee's official duty.
- (b) The prohibitions in paragraph (a) of this section do not apply in the context of obvious family or personal relationships, such as those between the parents, children, or spouse of the employee and the employee, when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors. An employee may accept:
 - (1) Food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon, dinner, or other meeting where an employee may properly be in attendance; and
 - (2) Unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars and other items of nominal value.
- (c) Employees found guilty of violating the provisions of this section will be subject to administrative remedies in accordance with existing or adopted State rules or policies.

SECTION 705.19 RESOLVING PROHIBITED INTERESTS

5-29-80

- (a) Actions to be taken by the Director:
 - (1) Remedial action to effect resolution. If an employee has a prohibited financial interest, the Director shall promptly advise the employee that remedial action which will resolve the prohibited interest is required within ninety (90) days.

- (2) Remedial action may include:
 - (i) Reassignment of the employee to a position which performs no function or duty under the Act, or
 - (ii) Divestiture of the prohibited financial interest, or
 - (iii) Other appropriate action which either eliminates the prohibited interest or eliminates the situation which creates the conflict.
 - (3) Reports of noncompliance. If ninety (90) days after an employee is notified to take remedial action that employee is not in compliance with the requirements of the Act and these rules, the Director shall take such action as is appropriate.
- (b) Actions to be taken by the Governor:
- (1) Remedial action to effect resolution. Violations of the rules in this part by the Director, will be cause for remedial action by the Governor based on recommendations from the OSM Director on behalf of the Secretary. The Governor shall promptly advise the Director of the recommendations of the OSM Director and if the Governor agrees with the recommendation of the OSM Director, he shall advise the Director that remedial action which will resolve the prohibited interest is required within ninety (90) days.
 - (2) Remedial action should be consistent with the procedures prescribed for other employees by Section 705.19(a)(2).

SECTION 705.21 APPEALS PROCEDURES

5-29-80

Employees have the right to appeal an order for remedial action under Section 705.19, and shall have thirty (30) days to exercise this right before disciplinary action is initiated.

- (a) Employees other than the Director, may file their appeal under Section 29 of the Act.
- (b) The Director may file his or her appeal, in writing, with the Circuit Court of Pulaski County.

PART 707 -- EXEMPTION FOR COAL EXTRACTION INCIDENTAL TO GOVERNMENT
-- FINANCED HIGHWAY OR OTHER CONSTRUCTION

SECTION

707.1	Scope
707.4	Responsibility
707.5	Definitions
707.11	Applicability
707.12	Information to be Maintained on the Site

SECTION 707.1 SCOPE

5-29-80

- (a) This Part establishes the procedures for determining those surface coal mining and reclamation operations which are exempt from the Act and this Chapter because the extraction of coal is an incidental part of Federal, State, or local government-financed highway or other construction.
- (b) This Part exempts the extraction of coal which is incidental to government-financed construction from the requirements of the Act and this Chapter, if that extraction meets specified criteria which ensure that the construction is government-financed and that the extraction of coal is incidental to it.

SECTION 707.4 RESPONSIBILITY

5-29-80

- (a) The Director is responsible for enforcing the requirements of this Part.
- (b) Any person conducting coal extraction as an incidental part of government-financed construction is responsible for possessing, on the site of the extraction operation, the documentation required by Section 707.12.

SECTION 707.5 DEFINITIONS

5-29-80

As used in this Part, the following terms have the specified meaning:

Extraction of coal as an incidental part means the extraction of coal which is necessary to enable the construction to be accomplished. For purposes of this Part, only that coal extracted from within the right-of-way, in the case of a road, railroad, utility line or other such construction, or within the

boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction.

Extraction of coal outside the right-of-way or boundary of the area directly affected by the construction shall be subject to the requirements of the Act and this Chapter.

Government financing agency means a Federal, State, county, municipal, or local unit of government, or a department, bureau, agency or office of the unit which, directly or through another unit of government, finances construction.

Government-financed construction means construction funded 50 percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds, but shall not mean government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments.

SECTION 707.11 APPLICABILITY

5-29-80

- (a) Coal extraction which is an incidental part of government-financed construction is exempt from the Act and this Chapter.
- (b) Any person who conducts or intends to conduct coal extraction which does not satisfy Paragraph (a) of this Section shall not proceed until a permit has been obtained from the Director under this program.

SECTION 707.12 INFORMATION TO BE MAINTAINED ON SITE

10-29-92

Any person extracting coal incident to government-financed highway or other construction who extracts more than 250 tons of coal shall maintain, on the site of the extraction operation and available for inspection, documents which show--

- (a) A description of the construction project;
- (b) The exact location of the construction, right-of-way or the boundaries of the area which will be directly affected by the construction; and
- (c) The government agency which is providing the financing and the kind and amount of public financing, including the percentage of the entire construction costs represented by the government financing.

SUBCHAPTER F -- AREAS UNSUITABLE FOR MINING

PART 760 -- GENERAL

SECTION

760.1	Scope
760.2	Objectives

SECTION 760.1 SCOPE

5-29-80

This Subchapter establishes procedures for implementing the requirements of the Act for designating lands unsuitable for all or certain types of surface coal mining operations, for terminating such designations, for identifying lands on which surface coal

SECTION 760.2 OBJECTIVES

5-29-80

The objectives of this Subchapter are to establish –

- (a) Procedures for consideration of petitions for the designation of lands as unsuitable for all or certain types of surface coal mining operations, for the termination of these designations, and for public participation in petition proceedings;
- (b) The minimum standards for obtaining, maintaining and analyzing information on the effects of coal development in areas covered by a petition in light of other potential uses and activities;
- (c) Procedures for identifying lands on which mining is prohibited or limited by Section 761 and for implementing those prohibitions or limitations; and
- (d) Criteria for determining if an area should be designated as unsuitable for all or certain types of surface coal mining operations.

PART 761 -- AREAS DESIGNATED BY ACT OF CONGRESS

SECTION

761.1	Scope
761.2	Objective
761.3	Authority
761.4	Responsibility
761.5	Definitions
761.11	Areas Where Surface Coal Mining Operations are Prohibited or Limited
761.12	Exception for Existing Operations
761.12	Procedures for Compatibility Findings for Surface Coal Mining Operations on Federal Lands in National Forests
761.13	Procedures for Relocating or Closing a Public Road or Waiving the Prohibition on Surface Coal Mining Operations within the Buffer Zone of a Public Road
761.14	Procedures for Waiving the Prohibition on Surface Coal Mining Operations within the Buffer Zone of an Occupied Dwelling
761.15	Submission and Processing of Requests for Valid Existing Rights Determinations
761.16	Areas Designated by Act of Congress
761.200	Interpretive Rule Related to Subsidence due to underground Coal Mining in Areas Designated by Act of Congress

SECTION 761.1 SCOPE

5-29-80

This Part establishes the procedures and standards to be followed in determining whether a proposed surface coal mining and reclamation operation can be authorized in light of the prohibitions and limitations in Section 522(e) of Public Law 95-87 for those types of operations on certain Federal, public and private lands.

SECTION 761.2 OBJECTIVE

5-29-80

The objective of this Part is to implement the prohibitions and limitations for surface coal mining operations on or near certain private, Federal, and other public lands under Section 522(e) of Public Law 95-87.

SECTION 761.3 AUTHORITY

5-29-80

The Commission is authorized by Section 522(e) of Public Law 95-87 (30 U.S.C. 1272(e)) to prohibit or limit surface coal mining operations on or near certain private, Federal, and other public lands, except for those operations which existed on August 3, 1977, or were subject to valid existing

rights on that date.

SECTION 761.4 RESPONSIBILITY

5-29-80

(a) The Commission shall

(1) Comply with this Part and Subchapter G; and

(2) Determine

- (i) Whether an application for a permit must be denied because surface coal mining operations on those lands are prohibited or limited by Section 522(e) of Public Law 95-87 (30 U.S.C. 1272(e)) and this Part and
- (ii) Whether an applicant for a permit covering such lands either had any valid existing rights on August 3, 1977, or was conducting a surface coal mining operation on those lands on August 3, 1977.

SECTION 761.5 DEFINITIONS

8-23-02

For the purposes of this Part

Valid existing rights means a set of circumstances under which a person may, subject to the Director's approval, conduct surface coal mining operations on lands where Section 761.11 would otherwise prohibit such operations. Possession of valid existing rights only confers an exception from the prohibitions of Section 761.11. A person seeking to exercise valid existing rights must comply with all other pertinent requirements of the Act and the state program.

- (a) Property rights demonstration. Except as provided in paragraph (c) of this definition, a person claiming valid existing rights must demonstrate that a legally binding conveyance, lease, deed, contract, or other document vests that person, or a predecessor in interest, with the right to conduct the type of surface coal mining operation intended. This right must exist at the time the land came under the protection of Section 761.11. Applicable State statutory or case law will govern interpretation of documents relied upon to establish property rights, unless Federal law provides otherwise. If no applicable State law exists, custom and generally accepted usage at the time and place that the documents came into existence will govern their interpretation
- (b) Except as provided in paragraph (c) of this definition, a person claiming valid existing rights also must demonstrate compliance with one of the following standards:

- (1) Good faith/all permits standard. All permits and other authorizations required to conduct surface coal mining operations had been obtained, or a good faith effort to obtain all necessary permits and authorizations had been made, before the land came under the protection of Section 761.11. At a minimum, an application must have been submitted for any permit required under Subchapter G of this chapter.
 - (2) Needed for and adjacent standard. The land is needed for and immediately adjacent to a surface coal mining operation for which all permits and other authorizations required to conduct surface coal mining operations had been obtained, or a good faith attempt to obtain all permits and authorizations had been made, before the land came under the protection of Section 761.11. To meet this standard, a person must demonstrate that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of Section 761.11. Except for operations in existence before August 3, 1977, or for which a good faith effort to obtain all necessary permits and authorizations had been made before August 3, 1977, this standard does not apply to lands already under the protection of Section 761.11 when the Director approved the permit for the original operation or when the good faith effort to obtain all necessary permits for the original operation was made. In evaluating whether a person meets this standard, the Director may consider factors such as:
 - (i) The extent to which coal supply contracts or other legal and business commitments that predate the time the land came under the protection of Section 761.11 depend upon use of that land for surface coal mining operations.
 - (ii) The extent to which plans used to obtain financing for the operation before the land came under the protection of Section 761.11 rely upon use of that land for surface coal mining operations.
 - (iii) The extent to which investments in the operation before the land came under the protection of Section 761.11 rely upon use of that land for surface coal mining operations.
 - (iv) Whether the land lies within the area identified on the life-of-mine map submitted under Section 779.24(c) of this chapter before the land came under the protection of Section 761.11.
- (b) Roads. A person who claims valid existing rights to use or construct a road across the surface of lands protected by Section 761.11 must demonstrate that one or more of the following circumstances exist if the road is included in the definition of “surface coal mining operations” in Section 700.5 of this chapter:

- (1) The road existed when the land upon which it is located came under the protection of Section 761.11, and the person has a legal right to use the road for surface coal mining operations.
- (2) A properly recorded right of way or easement for a road in that location existed when the land came under the protection of Section 761.11, and, under the document creating the right of way or easement, and under subsequent conveyances, the person has a legal right to use or construct a road across the right of way or easement for surface coal mining operations.
- (3) A valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of Section 761.11
- (4) Valid existing rights exist under paragraphs (a) and (b) of this definition.

Significant recreational, timber, economic or other values incompatible with surface coal mining operations means those significant values which could be damaged by, and are not capable of existing together with, surface coal mining operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on off-site areas which could be affected by mining. Those values to be evaluated for their importance include:

- (1) Recreation, including hiking, boating, camping, skiing or other related outdoor activities;
- (2) Timber management and silviculture;
- (3) Agriculture, aquaculture or production of other natural, processed or manufactured products which enter commerce;
- (4) Scenic, historic, archeological, esthetic, fish, wildlife, plants or cultural interests.

Surface operations and impacts incident to an underground coal mine means all activities involved in or related to underground coal mining which are either conducted on the surface of the land, produce changes in the land surface or disturb the surface, air or water sources of the area, including all activities listed in Section 701(28) of Public Law 95-87 and the definition of surface coal mining operations appearing in Section 700.5 of the rules.

Significant forest cover means an existing plant community consisting predominantly of trees and other woody vegetation.

Occupied dwelling means any building that is currently being used on a regular or temporary basis for human habitation.

Public buildings means any structure that is owned or leased by a public agency or used principally

for public business, meetings or other group gathering.

Community or institutional building means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental-health or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

Public park means an area dedicated or designated by any Federal, State, or local agency for public recreational use, whether or not such use is limited to certain times or days, including any land leased, reserved or held open to the public cause of that use.

Public road means a road--

- (a) which has been designated as a public road pursuant to the laws of the jurisdiction in which it is located;
- (b) which is maintained with public funds in a manner similar to other public roads of the same classification within the jurisdiction;
- (c) for which there is substantial (more than incidental) public use; and
- (d) which meets road construction standards for other public roads of the same classification in the local jurisdiction.

Cemetery means any area of land where human bodies are interred.

Publicly owned park means a public park that is owned by a Federal, State, or local governmental entity.

SECTION 761.11 AREAS WHERE SURFACE COAL MINING OPERATIONS ARE PROHIBITED OR LIMITED

8-23-02

An applicant may not conduct surface coal mining operations on the following lands unless he either have valid existing rights, as determined under Section 761.16, or qualifies for the exception for existing operations under Section 761.12:

- (a) Any lands within the boundaries of:
 - (1) The National Park System;
 - (2) The National Wildlife Refuge System;

- (3) The National System of Trails;
 - (4) The National Wilderness Preservation System;
 - (5) The Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act, 16 U.S.C. 1276(a), or study rivers or study river corridors established in any guidelines issued under that Act; or
 - (6) National Recreation Areas designated by Act of Congress.
- (b) Any Federal lands within a national forest. This prohibition does not apply if –
- (1) the Secretary finds that there are no significant recreational, timber, economic, or other values that may be incompatible with surface coal mining operations, and,
 - (2) Any surface operations and impacts will be incident to an underground coal mine.
- (c) Any lands where the operation would adversely affect any publicly owned park or any place in the National Register of Historic Places. This prohibition does not apply if, as provided in Section 761.17(d), the Director and the Federal, State, or local agency with jurisdiction over the park or place jointly approve the operation.
- (d) Within 100 feet, measured horizontally, of the outside right-of-way line of any public road. This prohibition does not apply:
- (1) Where a mine access or haul road joins a public road, or
 - (2) When, as provided in Section 761.14, the Director (or the appropriate public road authority designated by the Director) allows the public road to be relocated or closed, or the area within the protected zone to be affected by the surface coal mining operation, after:
 - (i) Providing public notice and opportunity for a public hearing; and
 - (ii) Finding in writing that the interests of the affected public and landowners will be protected.
- (e) Within 300 feet, measured horizontally, of any occupied dwelling. This prohibition does not apply when:
- (1) The owner of the dwelling has provided a written waiver consenting to surface coal mining operations within the protected zone, as provided in Section 761.15; or
 - (2) The part of the operation to be located closer than 300 feet to the dwelling is an access or haul road that connects with an existing public road on the side of the public road opposite the dwelling.

- (f) Within 300 feet, measured horizontally, of any public building, school, church, community or institutional building, or public park.
- (g) Within 100 feet, measured horizontally, of a cemetery. This prohibition does not apply if the cemetery is relocated in accordance with all applicable laws and rules.

SECTION 761.12 EXCEPTION FOR EXISTING OPERATIONS

8-23-02

The prohibitions and limitations of Section 761.11 do not apply to surface coal mining operations for which a valid permit, issued under Subchapter G of this chapter, exists when the land comes under the protection of Section 761.11. This exception applies only to lands within the permit area as it exists when the land comes under the protection of Section 761.11.

SECTION 761.13 PROCEDURES FOR COMPATIBILITY FINDINGS FOR SURFACE
COAL MINING OPERATIONS ON FEDERAL LANDS IN
NATIONAL FORESTS

8-23-02

- (a) An applicant who intends to rely upon the exception provided in Section 761.11(b) to conduct surface coal mining operations on Federal lands within a national forest, must request that OSM obtain the Secretarial findings required by Section 761.11(b).
- (b) An applicant may submit a request to OSM before preparing and submitting an application for a permit or boundary revision. The applicant must explain how the proposed operation would not damage the values listed in the definition of "significant recreational, timber, economic, or other values incompatible with surface coal mining operations" in Section 761.5. The request must include a map and sufficient information about the nature of the proposed operation for the Secretary to make adequately documented findings. OSM may request that any additional information that it determines is needed to make the required findings be provided.
- (c) When a proposed surface coal mining operation or proposed boundary revision for an existing surface coal mining operation includes Federal lands within a national forest, the Director may not issue the permit or approve the boundary revision before the Secretary makes the findings required by Section 761.11(b).

SECTION 761.14 PROCEDURES FOR RELOCATING OR CLOSING A PUBLIC ROAD
OR WAIVING THE PROHIBITION ON SURFACE COAL MINING
OPERATIONS WITHIN THE BUFFER ZONE OF A PUBLIC ROAD

8-23-02

- (a) This section does not apply to:
 - (1) Lands for which a person has valid existing rights, as determined under Section 761.16.
 - (2) Lands within the scope of the exception for existing operations in Section 761.12.
 - (3) Access or haul roads that join a public road, as described in Section 761.11(d)(1).
- (b) The applicant must obtain any necessary approvals from the authority with jurisdiction over the road if he proposes to:
 - (1) Relocate a public road;
 - (2) Close a public road; or
 - (3) Conduct surface coal mining operations within 100 feet, measured horizontally, of the outside right-of-way line of a public road.
- (c) Before approving an action proposed under paragraph (b) of this section, the Director, or a public road authority that he designates, must determine that the interests of the public and affected landowners will be protected. Before making this determination, the Director must:
 - (1) Provide a public comment period and opportunity to request a public hearing in the locality of the proposed operation;
 - (2) If a public hearing is requested, publish appropriate advance notice at least two weeks before the hearing in a newspaper of general circulation in the affected locality; and
 - (3) Based upon information received from the public, make a written finding as to whether the interests of the public and affected landowners will be protected. If a hearing was held, the Director must make this finding within 30 days after the hearing. If no hearing was held, the Director must make this finding within 30 days after the end of the public comment period.

SECTION 761.15 PROCEDURES FOR WAIVING THE PROHIBITION ON SURFACE
COAL MINING OPERATIONS WITHIN THE BUFFER ZONE OF AN
OCCUPIED DWELLING

8-23-02

- (a) This section does not apply to:
 - (1) Lands for which a person has valid existing rights, as determined under Section 761.16.
 - (2) Lands within the scope of the exception for existing operations in Section 761.12.
 - (3) Access or haul roads that connect with an existing public road on the side of the public road opposite the dwelling, as provided in Section 761.11(e)(2).
- (b) If the applicant proposes to conduct surface coal mining operations within 300 feet, measured horizontally, of any occupied dwelling, the permit application must include a written waiver by lease, deed, or other conveyance from the owner of the dwelling. The waiver must clarify that the owner and signatory had the legal right to deny mining and knowingly waived that right. The waiver will act as consent to surface coal mining operations within a closer distance of the dwelling as specified.
- (c) If the applicant obtained a valid waiver before August 3, 1977, from the owner of an occupied dwelling to conduct operations within 300 feet of the dwelling, he need not submit a new waiver.
- (d) If the applicant obtains a valid waiver from the owner of an occupied dwelling, that waiver will remain effective against subsequent purchasers who had actual or constructive knowledge of the existing waiver at the time of purchase. A subsequent purchaser will be deemed to have constructive knowledge if the waiver has been properly filed in public property records pursuant to State laws or if surface coal mining operations have entered the 300-foot zone before the date of purchase.

SECTION 761.16 SUBMISSION AND PROCESSING OF REQUESTS FOR VALID
EXISTING RIGHTS DETERMINATIONS

8-23-02

- (a) Basic framework for valid existing rights determinations.
 - (1) The agency responsible for making a valid existing rights determination shall be:
 - (i) OSM, for requests which pertain to Federal lands within the areas listed under Section 761.11(a) and (b); or,

- (ii) The Division, for requests which pertain to
 - (A) All non-Federal lands; or,
 - (B) Any lands listed under Section 761.11(c) - (g).
- (2) The applicable definition of valid existing rights shall be:
 - (i) The Federal definition at 30CFR Section 761.5, for requests for all lands within areas listed under Section 761.11(a) and (b); or,
 - (ii) The State program definition at Section 761.5, for requests for all lands within areas listed under Section 761.11(c) - (g).
- (b) Requirements of a request for a valid existing rights determination. The applicant must submit a request for a valid existing rights determination to the appropriate agency under paragraph (a) of this section if he intends to conduct surface coal mining operations on the basis of valid existing rights under Section 761.11 or wishes to confirm the right to do so. This request may be submitted before preparing and submitting an application for a permit or boundary revision for the land, unless the applicable regulatory program provides otherwise.
- (1) Requirements for property rights demonstration. The applicant must provide a property rights demonstration under paragraph (a) of the definition of valid existing rights in Section 761.5 if the request relies upon the good faith/all permits standard or the needed for and adjacent standard in paragraph (b) of the definition of valid existing rights in Section 761.5. This demonstration must include the following items:
 - (i) A legal description of the land to which the request pertains.
 - (ii) Complete documentation of the character and extent of the applicant's current interests in the surface and mineral estates of the land to which the request pertains.
 - (iii) A complete chain of title for the surface and mineral estates of the land to which the request pertains.
 - (iv) A description of the nature and effect of each title instrument that forms the basis for the request, including any provision pertaining to the type or method of mining or mining-related surface disturbances and facilities.
 - (v) A description of the type and extent of surface coal mining operations that the applicant claims the right to conduct, including the method of mining, any mining-related surface activities and facilities, and an explanation of how those operations would be consistent with State property law.

- (vi) Complete documentation of the nature and ownership, as of the date that the land came under the protection of Section 761.11, of all property rights for the surface and mineral estates of the land to which the request pertains.
 - (vii) Names and addresses of the current owners of the surface and mineral estates of the land to which the request pertains.
 - (viii) If the coal interests have been severed from other property interests, documentation that the applicant has notified and provided reasonable opportunity for the owners of other property interests in the land to which the request pertains to comment on the validity of the applicant's property rights claims.
 - (ix) Any comments that the applicant receives in response to the notification provided under paragraph (b)(1)(viii) of this section.
- (2) Requirements for good faith/all permits standard. If the applicant's request relies upon the good faith/all permits standard in paragraph (b)(1) of the definition of valid existing rights in Section 761.5, he must submit the information required under paragraph (b)(1) of this section. The applicant also must submit the following information about permits, licenses, and authorizations for surface coal mining operations on the land to which the request pertains:
- (i) Approval and issuance dates and identification numbers for any permits, licenses, and authorizations that the applicant or a predecessor in interest obtained before the land came under the protection of Section 761.11.
 - (ii) Application dates and identification numbers for any permits, licenses, and authorizations for which the applicant or a predecessor in interest submitted an application before the land came under the protection of Section 761.11.
 - (iii) An explanation of any other good faith effort that the applicant or a predecessor in interest made to obtain the necessary permits, licenses, and authorizations as of the date that the land came under the protection of Section 761.11.
- (3) Requirements for needed for and adjacent standard. If the applicant's request relies upon the needed for and adjacent standard in paragraph (b)(2) of the definition of valid existing rights in Section 761.5, the applicant must submit the information required under paragraph (b)(1) of this section. In addition, the applicant must explain how and why the land is needed for and immediately adjacent to the operation upon which the request is based, including a demonstration that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of Section 761.11.

- (4) Requirements for standards for mine roads. If the request relies upon one of the standards for roads in paragraphs (c)(1) through (c)(3) of the definition of valid existing rights in Section 761.5, the applicant must submit satisfactory documentation that:
 - (i) The road existed when the land upon which it is located came under the protection of Section 761.11, and the applicant has a legal right to use the road for surface coal mining operations;
 - (ii) A properly recorded right of way or easement for a road in that location existed when the land came under the protection of Section 761.11, and, under the document creating the right of way or easement, and under any subsequent conveyances, the applicant has a legal right to use or construct a road across that right of way or easement to conduct surface coal mining operations; or
 - (iii) A valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of Section 761.11.
- (c) Initial review of request.
 - (1) The agency must conduct an initial review to determine whether the applicant's request includes all applicable components of the submission requirements of paragraph (b) of this section. This review pertains only to the completeness of the request, not the legal or technical adequacy of the materials submitted.
 - (2) If the request does not include all applicable components of the submission requirements of paragraph (b) of this section, the agency must notify the applicant and establish a reasonable time for submission of the missing information.
 - (3) When the request includes all applicable components of the submission requirements of paragraph (b) of this section, the agency must implement the notice and comment requirements of paragraph (d) of this section.
 - (4) If the applicant does not provide information that the agency requests under paragraph (c)(2) of this section within the time specified or as subsequently extended, the agency must issue a determination that the applicant has not demonstrated valid existing rights, as provided in paragraph (e)(4) of this section.

(d) Notice and comment requirements and procedures.

(1) When the applicant's request satisfies the completeness requirements of paragraph (c) of this section, the agency must publish a notice in a newspaper of general circulation in the county in which the land is located. This notice must invite comment on the merits of the request. Alternatively, the agency may require that the applicant publish this notice and provide the agency with a copy of the published notice. OSM will publish a similar notice in the Federal Register if the applicant's request involves Federal lands within an area listed in Section 761.11(a) or (b). Each notice must include:

- (i) The location of the land to which the request pertains.
- (ii) A description of the type of surface coal mining operations planned.
- (iii) A reference to and brief description of the applicable standard(s) under the definition of valid existing rights in Section 761.5.
 - (A) If the request relies upon the good faith/all permits standard or the needed for and adjacent standard in paragraph (b) of the definition of valid existing rights in Section 761.5, the notice also must include a description of the property rights that the applicant claims and the basis for the claim.
 - (B) If the request relies upon the standard in paragraph (c)(1) of the definition of valid existing rights in Section 761.5, the notice also must include a description of the basis for the applicant's claim that the road existed when the land came under the protection of Section 761.11. In addition, the notice must include a description of the basis for the applicant's claim that he has a legal right to use that road for surface coal mining operations.
 - (C) If the request relies upon the standard in paragraph (c)(2) of the definition of valid existing rights in Section 761.5, the notice also must include a description of the basis for the applicant's claim that a properly recorded right of way or easement for a road in that location existed when the land came under the protection of Section 761.11. In addition, the notice must include a description of the basis for the claim that, under the document creating the right of way or easement, and under any subsequent conveyances, the applicant has a legal right to use or construct a road across the right of way or easement to conduct surface coal mining operations.
- (iv) If the request relies upon one or more of the standards in paragraphs (b), (c)(1), and (c)(2) of the definition of valid existing rights in Section 761.5, a statement that the agency will not make a decision on the merits of the applicant's request if, by the close of the comment period under this notice or

the notice required by paragraph (d)(3) of this section, a person with a legal interest in the land initiates appropriate legal action in the proper venue to resolve any differences concerning the validity or interpretation of the deed, lease, easement, or other documents that form the basis of the claim.

- (v) A description of the procedures that the agency will follow in processing the request.
 - (vi) The closing date of the comment period, which must be a minimum of 30 days after the publication date of the notice.
 - (vii) A statement that interested persons may obtain a 30-day extension of the comment period upon request.
 - (viii) The name and address of the agency office where a copy of the request is available for public inspection and to which comments and requests for extension of the comment period should be sent.
- (2) The agency must promptly provide a copy of the notice required under paragraph (d)(1) of this section to:
- (i) All reasonably locatable owners of surface and mineral estates in the land included in the applicant's request.
 - (ii) The owner of the feature causing the land to come under the protection of Section 761.11, and, when applicable, the agency with primary jurisdiction over the feature with respect to the values causing the land to come under the protection of Section 761.11.
- (3) The letter transmitting the notice required under paragraph (d)(2) of this section must provide a 30-day comment period, starting from the date of service of the letter, and specify that another 30 days is available upon request. At its discretion, the agency responsible for the determination of valid existing rights may grant additional time for good cause upon request. The agency need not necessarily consider comments received after the closing date of the comment period.
- (e) Decision making procedure.
- (1) The agency responsible for making the determination of valid existing rights must review the materials submitted under paragraph (b) of this section, comments received under paragraph (d) of this section, and any other relevant, reasonably available information to determine whether the record is sufficiently complete and adequate to support a decision on the merits of the request. If not, the agency must notify the applicant in writing, explaining the inadequacy of the record and requesting submittal, within a specified reasonable time, of any additional information that the agency deems necessary to remedy the inadequacy.

- (2) Once the record is complete and adequate, the responsible agency must determine whether the applicant has demonstrated valid existing rights. The decision document must explain how the applicant has or has not satisfied all applicable elements of the definition of valid existing rights in Section 761.5. It must contain findings of fact and conclusions, and it must specify the reasons for the conclusions.
- (3) Impact of property rights disagreements. This paragraph applies only when the applicant's request relies upon one or more of the standards in paragraphs (b), (c)(1), and (c)(2) of the definition of valid existing rights in Section 761.5.
 - (i) The agency must issue a determination that the applicant has not demonstrated valid existing rights if the property rights claims are the subject of pending litigation in a court or administrative body with jurisdiction over the property rights in question. The agency will make this determination without prejudice, meaning that the applicant may refile the request once the property rights dispute is finally adjudicated. This paragraph applies only to situations in which legal action has been initiated as of the closing date of the comment period under paragraph (d)(1) or (d)(3) of this section.
 - (ii) If the record indicates disagreement as to the accuracy of the applicant's property rights claims, but this disagreement is not the subject of pending litigation in a court or administrative agency of competent jurisdiction, the agency must evaluate the merits of the information in the record and determine whether the applicant has demonstrated that the requisite property rights exist under paragraph (a), (c)(1), or (c)(2) of the definition of valid existing rights in Section 761.5, as appropriate. The agency must then proceed with the decision process under paragraph (e)(2) of this section.
- (4) The agency must issue a determination that the applicant has not demonstrated valid existing rights if he does not submit information that the agency requests under paragraph (c)(2) or (e)(1) of this section within the time specified or as subsequently extended. The agency will make this determination without prejudice, meaning that the applicant may refile a revised request at any time.
- (5) After making a determination, the agency must:
 - (i) Provide a copy of the determination, together with an explanation of appeal rights and procedures, to the applicant, to the owner or owners of the land to which the determination applies, to the owner of the feature causing the land to come under the protection of Section 761.11, and, when applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of Section 761.11.
 - (ii) Publish notice of the determination in a newspaper of general circulation in the county in which the land is located. Alternatively, the agency may require

that the applicant publish this notice and provide a copy of the published notice to the agency. OSM will publish the determination, together with an explanation of appeal rights and procedures, in the Federal Register if the request includes Federal lands within an area listed in Section 761.11(a) or (b).

- (f) Administrative and judicial review. A determination that the applicant has or does not have valid existing rights is subject to administrative and judicial review under Sections 787.11 and 787.12 of this chapter.
- (g) Availability of records. The agency responsible for processing a request subject to notice and comment under paragraph (d) of this section must make a copy of that request available to the public in the same manner as the agency, when acting as the regulatory authority, must make permit applications available to the public under Section 786.15) of this chapter. In addition, the agency must make records associated with that request, and any subsequent determination under paragraph (e) of this section, available to the public in accordance with the requirements and procedures of Section. 842.16 of this chapter.

SECTION 761.17 AREAS DESIGNATED BY ACT OF CONGRESS

8-23-02

- (a) Upon receipt of an administratively complete application for a permit for a surface coal mining operation, or an administratively complete application for revision of the boundaries of a surface coal mining operation permit, the Director must review the application to determine whether the proposed surface coal mining operation would be located on any lands protected under Section 761.11.
- (b) The Director must reject any portion of the application that would locate surface coal mining operations on land protected under Section 761.11 unless:
 - (1) The site qualifies for the exception for existing operations under Section 761.12;
 - (2) A person has valid existing rights for the land, as determined under Section 761.16;
 - (3) The applicant obtains a waiver or exception from the prohibitions of Section 761.11 in accordance with Sections 761.13 through 761.15; or
 - (4) For lands protected by Section 761.11(c), both the Director and the agency with jurisdiction over the park or place jointly approve the proposed operation in accordance with paragraph (d) of this section.
- (c) Location verification. If the Director has difficulty determining whether an application includes land within an area specified in Section 761.11(a) or within the specified distance from a structure or feature listed in Section 761.11(f) or (g), the Director must request that

the Federal, State, or local governmental agency with jurisdiction over the protected land, structure, or feature verify the location.

- (1) The request for location verification must:
 - (i) Include relevant portions of the permit application.
 - (ii) Provide the agency with 30 days after receipt to respond, with a notice that another 30 days is available upon request.
 - (iii) Specify that the Director will not necessarily consider a response received after the comment period provided under paragraph (c)(1)(ii) of this section.
 - (2) If the agency does not respond in a timely manner, the Director may make the necessary determination based on available information.
- (d) Procedures for joint approval of surface coal mining operations that will adversely affect publicly owned parks or historic places.
- (1) If the Director determines that the proposed surface coal mining operation will adversely affect any publicly owned park or any place included in the National Register of Historic Places, the Director must request that the Federal, State, or local agency with jurisdiction over the park or place either approve or object to the proposed operation. The request must:
 - (i) Include a copy of applicable parts of the permit application.
 - (ii) Provide the agency with 30 days after receipt to respond, with a notice that another 30 days is available upon request.
 - (iii) State that failure to interpose an objection within the time specified under paragraph (d)(1)(ii) of this section will constitute approval of the proposed operation.
 - (2) The Director may not issue a permit for a proposed operation subject to paragraph (d)(1) of this section unless all affected agencies jointly approve.
 - (3) Paragraphs (d)(1) and (d)(2) of this section do not apply to:
 - (i) Lands for which a person has valid existing rights, as determined under Section 761.16.
 - (ii) Lands within the scope of the exception for existing operations in Section 761.12.

SECTION 761.200 INTERPRETIVE RULE RELATED TO SUBSIDENCE DUE TO
UNDERGROUND COAL MINING IN AREAS DESIGNATED BY
ACT OF CONGRESS

8-23-02

The Division has adopted the following interpretation of rules promulgated in Part 761.

- (a) Interpretation of Section 761.11 – AREAS WHERE MINING IS PROHIBITED OR LIMITED. Subsidence due to underground coal mining is not included in the definition of surface coal mining operations under Section 15-58-104(16) of the Act and Section 700.5 of this chapter and therefore is not prohibited in areas protected under Section 15-58-501(a)(1) of the Act.

PART 762 -- CRITERIA FOR DESIGNATING AREAS AS UNSUITABLE FOR SURFACE COAL MINING OPERATIONS

SECTION

762.1	Scope
762.4	Responsibility
762.5	Definitions
762.11	Criteria for Designating Lands as Unsuitable
762.12	Additional Criteria
762.13	Land Exempt from Designation as Unsuitable for Surface Coal Mining Operations
762.14	Applicability to Land Designated as Unsuitable by Congress
762.15	Exploration of Land Designated as Unsuitable for Surface Coal Mining Operations

SECTION 762.1 SCOPE

5-29-80

This Part establishes the minimum criteria to be used in determining whether lands should be designated as unsuitable for all or certain types of surface coal mining operations.

SECTION 762.4 RESPONSIBILITY

5-29-80

The Director shall use the criteria in this part for the evaluation of each petition for the designation of areas as unsuitable for surface coal mining operations.

SECTION 762.5 DEFINITIONS

5-01-87

For purposes of this Part:

Fragile lands means geographic areas containing natural, ecologic, scientific or esthetic resources that could be damaged or destroyed by surface coal mining operations. Examples of fragile lands include valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, National Natural Landmark sites, areas where mining may cause flooding, environmental corridors containing a concentration of ecologic and esthetic features, areas of recreational value due to high environmental quality, and buffer zones adjacent to the boundaries of areas where surface coal mining operations are prohibited under Section 522(e) of Public Law 95-87 and Section 761 of the rules.

Historic lands means historic, cultural, and scientific areas that could be damaged or be destroyed by surface coal mining operations. Examples of historic lands included archeological and paeontological sites, sites listed on or eligible for listing on a State or National Register of Historic places. National Historic Landmark sites, sites having religious or cultural significance to native Americans or religious groups, and sites for which historic designation is pending.

Natural hazard lands means geographic areas in which natural conditions exists which pose or, as a result of surface coal mining operations, may pose a threat to the health, safety or welfare of people, property or the environment, including areas subject to landslides, cave-ins, large or encroaching sand dunes, severe wind or soil erosion, frequent flooding, avalanches and areas of unstable geologic conditions.

Substantial legal and financial commitments in a surface coal mining operation means significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities and other capital-intensive activities. An example would be an existing mine, not actually producing coal, but in a substantial stage of development prior to production. Costs of acquiring the coal in place or of the right to mine it without an existing mine, as described in the above example, alone are not sufficient to constitute substantial legal and financial commitments.

SECTION 762.11

CRITERIA FOR DESIGNATING LANDS AS UNSUITABLE

5-29-80

- (a) Upon petition an area shall be designated as unsuitable for all or certain types of surface coal mining operations, if the Director determines that reclamation is not technologically and economically feasible under the Act, this Chapter and the State program.
- (b) Upon petition an area may be (but is not required to be) designated as unsuitable for certain types of surface coal mining operations, if the operations will –
 - (1) Be incompatible with existing State or local land use plans or programs;
 - (2) Affect fragile or historic lands in which the operations could result in significant damage to important historic, cultural, scientific, or esthetic values or natural systems;
 - (3) Affect renewable resource lands in which the operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products; or

- (4) Affect natural hazard lands in which the operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geologic conditions.

SECTION 762.12 ADDITIONAL CRITERIA

5-29-80

- (a) The Commission may in accordance with the Act establish additional or more stringent criteria for determining whether lands within the state should be designated as unsuitable for surface coal mining operations.
- (b) Additional criteria will be determined to be more stringent on the basis of whether they provide for greater protection of the public health, safety and welfare or the environment, such that areas beyond those specified in the criteria of this part would be designated as unsuitable for surface coal mining operations.

SECTION 762.13 LAND EXEMPT FROM DESIGNATION AS UNSUITABLE
FOR SURFACE COAL MINING OPERATIONS

5-29-80

The requirements of this Part do not apply to –

- (a) Lands on which surface coal mining operations were being conducted on August 3, 1977;
- (b) Lands covered by a permit issued under the Act; or
- (c) Lands where substantial legal and financial commitments in surface coal mining operations were in existence prior to January 4, 1977.

SECTION 762.14 APPLICABILITY TO LANDS DESIGNATED AS UNSUITABLE BY
CONGRESS

8-23-02

Pursuant to appropriate petitions, lands listed in Section 761.11 of this chapter are subject to designation as unsuitable for all or certain types of surface coal mining operations under this part and Part 764 of this chapter.

Designation of any area as unsuitable for all or certain types of surface coal mining operations pursuant to Section 26 of the Act and rules of this Subchapter does not prohibit coal exploration operations in the area, if conducted in accordance with the Act, this Chapter, the State program, and other applicable requirements. Exploration operations on any lands designated unsuitable for surface coal mining operations must be approved by the Director under Section 776, to insure that exploration does not interfere with any value for which the area has been designated unsuitable for surface coal mining.

PART 764 -- STATE PROCESSES FOR DESIGNATING AREAS UNSUITABLE FOR SURFACE COAL OPERATIONS

SECTION

764.1	Scope
764.2	Objective
764.3	Authority
764.13	Procedures: Petitions
764.15	Procedures: Initial Processing, Recordkeeping, and Notification Requirements
764.17	Procedures: Hearing Requirements
764.19	Procedures: Decision
764.21	Data Base and Inventory System Requirements
764.23	Public Information
764.25	Director's Responsibility for Implementation

SECTION 764.1 SCOPE

5-29-80

This Part establishes minimum procedures and standards for designating non-Federal lands in Arkansas as unsuitable for all or certain types of surface coal mining operations and for terminating designations.

SECTION 764.2 OBJECTIVE

5-29-80

The objective of this Part is to insure that the Commission, Division, and Director implement processes to designate lands unsuitable for all or certain types of surface coal mining operations and for terminating designations.

SECTION 764.3 AUTHORITY

5-29-80

The Commission has authority to develop procedures and standards, consistent with this Part, to designate lands unsuitable for all or certain types of surface coal mining operations and to terminate such designations.

- (a) Right to petition. Any person having an interest which is or may be adversely affected has the right to petition the regulatory authority to have an area designated as unsuitable for surface coal mining operations, or to have an existing designation terminated. For the purpose of this action, a person having an interest which is or may be adversely affected must demonstrate how he or she meets an "injury in fact" test by describing the injury to his or her specific affected interest and demonstrate how he or she is among the injured.
- (b) Designation. The Division shall determine what information must be provided by the petitioner to have an area designated as unsuitable for surface coal mining operations.
 - (1) At a minimum, a complete petition for designation shall include:
 - (i) The petitioner's name, address, telephone number, and notarized signature;
 - (ii) Identification of the petitioned areas, including its location and size, and a U.S. Geological Survey topographic map of the petitioned area;
 - (iii) An identification of the petitioner's interest which is or may be adversely affected by surface coal mining operations, including a statement demonstrating how the petitioner satisfies the requirements of paragraph (a) of this section;
 - (iv) A description of how mining of the area has affected or may adversely affect people, land, air, water, or other resources, including the petitioner's interest; and,
 - (v) Allegations of fact and supporting evidence, covering all lands in the petition area, which tend to establish that the area is unsuitable of all of certain types of surface coal mining operations, pursuant to specific criteria of sections 522(a)(2) and (3) of the Act, assuming that contemporary mining practices required under applicable regulatory programs would be followed if the area were to be mined. Each of the allegations of fact should be specific as to the mining operation, if known, and the portion(s) of the of the petitioned area and petitioner's interest to which the allegation applies and be supported by evidence that tends to establish the validity of the allegations for the mining operation or portion of the petitioned areas.
 - (2) The Division may request that the petitioner provide other supplementary information which is readily available.

- (c) Termination. The Division shall determine what information must be provided by the petitioner to terminate designations of lands as unsuitable for surface coal mining operations.

(1) At a minimum, a complete petition for termination shall include:

- (i) The petitioner's name, address, telephone number, and notarized signature;
- (ii) Identification of the petitioned area, including its location and size and a U.S. Geological Survey topographic map outlining the perimeter of the petitioned area to which the termination petition applies;
- (iii) An identification of the petitioner's interest which is or may be adversely affected by the designation that the area is unsuitable for surface coal mining operations including a statement demonstrating how the petitioner satisfies the requirements of paragraph (a) of this section;
- (iv) Allegations of facts covering all lands for which the termination is proposed. Each of the allegations of fact shall be specific as to the mining operation, if any, and to portions of the petitioned area and petitioner's interest to which the allegation applies. The allegations shall be supported by evidence, not contained in the record of the designation proceeding, that tends to establish the validity of the allegations for the mining operations or portion of the petitioned area, assuming that contemporary mining practices required under applicable regulatory programs would be followed were the area to be mined. For areas previously and unsuccessfully proposed for termination, significant new allegations of facts and supporting evidence must be presented in the petition. Allegations and supporting evidence should also be specific to the basis for which the designation was made and tend to establish that the designation should be terminated on the following bases:
 - (A) Nature or abundance of the protected resource or condition or other basis of the designation if the designation was based on criteria found in Section 762.11(b) of this Chapter;
 - (B) Reclamation now being technologically and economically feasible if the designation was based on the criteria found in Section 762.11(a) of this Chapter; or
 - (C) Resources or conditions not being affected by surface coal mining operations or in the case of land use plans, not being

incompatible with surface coal mining, if the designation was based on the criteria found in Section 762.11(b) of this Chapter.

- (d) The State regulatory authority may request that the petitioner provide other supplementary information which is readily available.

SECTION 764.15 PROCEDURES: INITIAL PROCESSING, RECORDKEEPING,
AND NOTIFICATION REQUIREMENTS

8-23-02

- (a)
 - (1) Promptly after a petition is received, the Division shall notify the general public of the receipt of the petition by a newspaper advertisement placed in the locale of the area covered by the petition, in the newspaper providing broadest circulation in the region of the petitioned area and in any official State register of public notices. Within thirty (30) days of receipt of a petition, the Commission shall notify the petitioner by certified mail whether or not the petition is complete under Section 764.13(b) or (c).
 - (2) The Commission shall determine whether any identified coal resources exist in the area covered by the petition, without requiring any showing from the petitioner. If the Commission finds there are not any identified coal resources in that area, it shall return the petition to the petitioner with a statement of the findings.
 - (3) The Commission may reject petitioner for designations or terminations of designations which are frivolous. Once the requirements of Section 764.13 are met, no party shall bear any burden of proof, but each accepted petition shall be considered and acted upon by the Commission pursuant to the procedures of this Part.
 - (4) When considering a petition for an area which was previously and unsuccessfully proposed for designation, the Commission shall determine if the new petition presents new allegations of facts. If the petition does not contain new allegations of facts, the Commission shall not consider the petition and shall return the petition to the petitioner, with a statement of its findings and a reference to the record of the previous designation proceedings where the facts were considered.
 - (5) If the Commission determines that the petition is incomplete or frivolous, it shall return the petition to the petitioner, with a written statement of the reasons for the determination and the categories of information needed to make the petition complete.

- (6) The Commission shall notify the person who submits a petition of any application for a permit received which proposes to include any area covered by the petition.
 - (7) Any petitions received after the close of the public comment period on a permit application relating to the same permit area shall not prevent the Commission from issuing a decision on that permit application. The Commission may return any petition received thereafter to the petitioner with a statement why the Commission cannot consider the petition. For the purposes of this Section, close of the public comment period shall mean at the close of any legislative public hearing held under Section 786, or, if no conference is requested, at the close of the period for filing written comments and objections under Section 786.12-13.
- (b)
- (1) Within three weeks after the determination that a petition is complete, the Commission shall circulate copies of the petition to, request submissions of relevant information from, other interested governmental agencies, the petitioner, intervener, persons with an ownership interest of record in the property, and other persons known to the Commission to have an interest in the property.
 - (2) Within three weeks after the determination that a petition is complete, the Commission shall notify the general public of the receipt of the petition and request submissions of relevant information by a newspaper advertisement placed once a week for two consecutive weeks in the locale of the area covered by the petition, in the newspaper of largest circulation in the State, and in any official State register of public notices.
- (c) Until three days before the Commission holds a hearing under Section 764.17, any person may intervene in the proceeding by filing allegations of facts, supporting evidence, a short statement identifying the petition to which the allegations pertain, and the intervenor's name, address and telephone number.
- (d) Beginning immediately after a complete petition is filed, the Commission shall compile and maintain a record consisting of all documents relating to the petition filed with or prepared by the Commission. The Commission shall make the record available for public inspection, free of charge, and copying, at reasonable cost, during all normal business hours at a central location of the county or multicounty area in which the land petitioned is located, and at the central office of the Division.

- (a) Within 10 months after receipt of a complete petition, the Commission shall hold a public hearing in the locality of the area covered by the petition. If all petitioners and intervenors agree, the hearing need not be held. The hearing shall be legislative in nature and conducted pursuant to Section 28 of the Act; with a transcript made of all hearings. Direct Cross-examination or witnesses shall not be allowed; any party to the proceeding may submit questions to the presiding which may be directed to the witness by the presiding officer if such questions would aid in assessing the merits of the petition.
- (b)
 - (1) The Commission shall give notice of the date, time, and location of the hearing to:
 - (i) Local, State, and Federal agencies which may have an interest in the decision on the petition;
 - (ii) The petitioner and the intervenors; and
 - (iii) Any person with an ownership or other interest known to the Commission in the area covered by the petition.
 - (2) Notice of the hearing shall be sent by certified mail and postmarked not less than thirty (30) days before the scheduled date of the hearing.
- (c) The Commission shall notify the general public of the date, time, and location of the hearing by placing a newspaper advertisement once a week for two (2) consecutive weeks in the locale of the area covered by the petition and once during the week prior to the scheduled date of the public hearing. The consecutive weekly advertisement must begin between four (4) and five (5) weeks before the scheduled date of the public hearing.
- (d) The Commission may consolidate in a single hearing the hearings required for each of several petitions which relate to areas in the same locale.
- (e) Prior to designating any land areas as unsuitable for surface coal mining operations, the Commission shall prepare a detailed statement, using existing and available information on the potential coal resources of the area, the demand for coal resources, and the impact of such designation on the environment, the economy, and the supply of coal.
- (f) In the event that all petitioners and intervenors stipulate agreement prior to the hearing, the petition may be withdrawn from consideration.

- (a) In reaching its decision, the Commission shall use –
 - (1) The information contained in the data base and inventory system;
 - (2) Information provided by other governmental agencies;
 - (3) The detailed statement prepared under Section 764.17(e); and
 - (4) Any other relevant information submitted during the comment period.
- (b) A final written decision shall be issued by the Commission including a statement of reasons, within 60 days of completion of the public hearing, or, if no public hearing is held, then within 12 months after receipt of the complete petition. The Commission shall simultaneously send the decision by certified mail to the petitioner, every other party of the proceeding, and to the OSM Regional Director for Region IV.
- (c) The decision of the Commission with respect to a petition, or the failure of the Commission to act within the time limits set forth in this Section, shall be subject to judicial review by a court of competent jurisdiction in accordance with State law under Section 30 of the Act and Section 787.12 of the rules.

- (a) The Commission shall develop a data base and inventory system which will permit evaluation of whether reclamation is feasible in areas covered by petitions.
- (b) The Commission shall include in the system information relevant to the criteria in Section 762.11, including, but not limited to, information received from the U.S. Fish and Wildlife Service, the State Historic Preservation Officer, and the agency administering Section 127 of the Clean Air Act, as amended (42 U.S.C. Section 7470 et seq.).
- (c) The Commission shall add to the data base and inventory system information –
 - (1) On potential coal resources of the State, demand for those resources, the environment, the economy and the supply of coal, sufficient to enable the Commission to prepare the statements required by section 764.17(e); and,
 - (2) That becomes available from petitions, publications, experiments, permit applications, mining and reclamation operations, and other sources.

The Commission shall:

- (a) Make the information and data base system developed under Section 764.21 available to the public for inspection free of charge and for copying at a reasonable cost;
- (b) Provide information to the public on the petition procedures necessary to have an area designated as unsuitable for all or certain types of surface coal mining operations or have designations terminated and describe how the inventory and data base system can be used.

- (a) Neither the Director nor the Commission shall issue permits which are inconsistent with designations made pursuant to Parts 760, 761, 762, or 764.
- (b) The Director shall maintain a map of areas designated as unsuitable for all or certain types of surface coal mining operations.
- (c) The Division shall make available to any person any information within its control regarding designations, including mineral or elemental content which is potentially toxic in the environment but excepting proprietary information on the chemical and physical properties of the coal.

SUBCHAPTER G -- SURFACE COAL MINING AND RECLAMATION
OPERATIONS PERMITS AND COAL EXPLORATION PROCEDURES SYSTEMS

PART 770 -- GENERAL

SECTION

770.1	Scope
770.2	Objectives
770.4	Responsibilities
770.5	Definitions
770.6	Organization
770.11	Applicability

SECTION 770.1 SCOPE

5-29-80

This Subchapter provides the minimum requirements for the permit and exploration procedures for coal exploration and surface coal mining and reclamation operations. These include –

- (a) Requirements for obtaining permits;
- (b) The timing, development and filing of permit applications;
- (c) Review of applications and approval or denial of permits;
- (d) Administrative review of decisions permits;
- (e) The terms and conditions of permits;
- (f) Public participation in the permit process;
- (g) The renewal and revision of permits;
- (h) Requirements for permits for special categories of surface coal mining and reclamation operations; and
- (i) Procedures for coal exploration operations under the State Program.

SECTION 770.2 OBJECTIVES

5-29-80

The objectives of this Subchapter are to ensure that surface coal mining and reclamation operations are conducted only after the Director has first determined that reclamation is feasible and that all approved coal explorations and permitted surface coal mining and reclamation operations are conducted so as to fully protect the environment.

SECTION 770.4 RESPONSIBILITIES

5-29-80

- (a) Persons seeking to engage in surface coal mining and reclamation operations must submit an application for and obtain a permit for those operations in accordance with this Subchapter. Persons seeking to conduct coal exploration must first file the notice of intention or obtain approval of the Director as required under Section 776.
- (b) The Director shall review each application for exploration approval and for a permit, approve or disapprove each permit application or exploration application, and issue, condition, suspend, or revoke exploration approval, permits, renewals or revised permits under the State program.

SECTION 770.5 DEFINITIONS

10-29-92

As used throughout this Subchapter, except where otherwise indicated:

Application means the documents and other information filed with the Director under this Subchapter and the State program for the issuance of exploration approval or a permit.

Complete application means an application for exploration approval or permit, which contains all information required under the Act, this Subchapter and the State program.

General area means, with respect to hydrology, the topographic and ground water basin surrounding a permit area which is of sufficient size, including areal extent and depth, to include one or more watersheds containing perennial streams and groundwater zones and to allow assessment of the probable cumulative impacts on the quality and quantity of the surface and groundwater systems in the basins.

Principal shareholder means any person who is the record or beneficial owner of 10 percent or more of any class of voting stock.

Property to be mined means both the surface and mineral estates on and underneath lands which are

within the permit area.

Violation notice means any written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading, or other written communication.

SECTION 770.6 ORGANIZATION

10-29-92

This Subchapter is organized according to separate parts, as follows:

- (a) Parts 770 and 771 establish introductory, definitional, and other general provisions applicable for all Parts of this Subchapter.
- (b) RESERVED.
- (c) Part 776 establishes procedures regarding coal exploration.
- (d) Parts 778, 779, and 780 establish specific requirements for permit application contents for underground coal mining activities.
- (e) Parts 782, 783, and 784 establish specific requirements for permit application contents for underground coal mining activities.
- (f) Part 785 establishes requirements for permits for certain special categories of surface coal mining and reclamation operations.
- (g) Part 786 establishes requirements for the review, issuance, or denial of permits, and for public participation in that process.
- (h) Part 788 establishes requirements for review revision and renewal of permits, and for the transfer, sale and assignment of rights granted under permits.
- (i) Part 795 establishes requirements for providing assistance to small operators and qualifying laboratories to perform necessary hydrologic consequences determinations and boring or core sampling analyses for those operators.

- (a) This Subchapter applies to each person who applies for a permit to conduct surface coal mining and reclamation operations under the state program.
- (b) This Subchapter applies to the Division and, where specifically provided, to the Director.

PART 771 -- GENERAL REQUIREMENTS FOR PERMITS AND APPLICATIONS

SECTION

771.1	Scope
771.2	Objectives
771.11	General Requirements for Permits –Operators
771.13	Continued Operation under Interim Permits
771.19	Compliance with Permits
771.21	Permit Application Filing Deadlines
771.23	Permit Applications – General Requirements for Format and Contents
771.25	Permit Fees
771.27	Verification of Application

SECTION 771.1 SCOPE

5-29-80

This part establishes minimum general criteria for permits and permit applications requirements which are applicable to obtaining the Director's approval of permit applications.

SECTION 771.2 OBJECTIVES

5-29-80

The objectives of this Part are to insure that all surface coal mining and reclamation operations are conducted only under permits issued in accordance with the requirements of the regulatory program, that all persons make timely application for permits, to provide general requirements on permit fee systems, and to provide the general content requirements of permit applications.

SECTION 771.11 GENERAL REQUIREMENTS FOR PERMITS C OPERATORS

5-29-80

Except as provided for in Section 771.13(b) on and after eight (8) months from the date on which the State program is approved by the Secretary, no person shall engage in or carry out on non-federal lands within a State any surface coal mining and reclamation operations unless that person has first obtained a valid permit issued by the Division under the state program.

SECTION 771.13 CONTINUED OPERATION UNDER INTERIM PERMITS

5-29-80

- (a) A person conducting surface coal mining operations, under a permit issued by the Director in accordance with the requirements of Section 502 of Public Law 95-87 may conduct these operations beyond the period prescribed in Section 771.11, if all of the following conditions are present:
 - (1) Timely and complete application for a permit under the permanent regulatory program has been made to the Division in accordance with the provisions of the Act, this Subchapter and the State program;
 - (2) The Director has not yet rendered an initial decision with respect to such application; and
 - (3) The operations are conducted in compliance with all terms and conditions of the outstanding permit; the requirements of the applicable state and federal laws and rules and regulations.

SECTION 771.19 COMPLIANCE WITH PERMITS

5-29-80

All persons shall conduct surface coal mining and reclamation operations under permits issued pursuant to this Subchapter and the State program and shall comply with the terms and conditions of the permit and the requirements of the Act, this Chapter and the State program.

SECTION 771.21 PERMIT APPLICATION FILING DEADLINES

5-29-80

- (a) Initial Implementation of the State program.
 - (1) Not later than two (2) months following the initial approval of the State program regardless of litigation contesting that approval, each person who conducts or expects to conduct surface coal mining and reclamation operations after the expiration of eight (8) months from such approval shall file an application for a permit for those operations.
 - (2) Applications for those operations which are not filed within the time required by Paragraph (a)(1) for this Section shall be deemed applications filed under Paragraph (b)(1) of this Section.
- (b) Filing deadlines after two (2) months from approval of State programs.

- (1) General. Each person who conducts or expects to conduct new surface coal mining and reclamation operations shall file a complete application for a permit for those operations within ninety (90) days prior to the expected date of commencement of surface coal mining and reclamation operations.
- (2) Renewal of valid permits. An application for renewal of a permit shall be filed with the Division at least 120 days before the expiration of the permit involved.
- (3) Revisions of permits. Any application for revision of a permit shall be filed with the Division at least ninety (90) days before the date on which the permittee expects to revise surface coal mining or reclamation operations.
- (4) Succession to rights granted under prior permits. Any application for a new permit required for a person succeeding by transfer, sale or assignment of rights granted under a permit shall be filed with the Division not later than thirty (30) days after that succession is approved by the Director.

SECTION 771.23 PERMIT APPLICATIONS -- GENERAL REQUIREMENTS
FOR FORMAT AND CONTENTS

10-29-92

- (a) An application for a permit to conduct surface coal mining and reclamation operations shall be filed in the format required by the Director. The application shall be complete and include, at a minimum, for surface coal mining, all the applicable information required under Parts 778, 779, and 780 and for underground coal mining, all the information required under Parts 782, 783, and 784; and, for special types of surface coal mining and reclamation operations, all the information required under Part 785.
- (b) Information set forth in the application shall be current, presented clearly and concisely, and supported by appropriate references technical and other written material available to the Director.
- (c) All technical data submitted in the application shall be accompanied by –
 - (1) Names of persons or organizations which collected and analyzed such data;
 - (2) Dates of the collection and analyses; and
 - (3) Descriptions of methodology used to collect and analyze the data.
 - (4) Technical analyses shall be planned by or under the direction of a professional qualified in the subject to be analyzed.

- (d) Application shall state the name, address and position of officials of each private or academic research organization or government agency consulted by the applicant in preparation of the application regarding information on land-uses, soils, geology, vegetation, fish and wildlife, water quantity and quality, air quality, and archeological, cultural, and historic features.
- (e) Maps and plans – General requirements.
 - (1) Maps submitted with applications shall be presented in a consolidated format, to the extent possible, and shall include all the types of information that are set forth on topographic maps of the U.S. Geological Survey of the 1:24,000 scale series. Maps of the permit area shall be at a scale of 1:6,000 or larger. Maps of the remainder of the adjacent areas shall clearly show the lands and waters within these areas and be in a scale determined by the Director, but in no event smaller than 1:24,000.
 - (2) All maps and plans submitted with the application shall distinguish among each of the phases during which surface coal mining operations were or will be conducted at any place within the life of operations area. At a minimum, distinctions shall be clearly shown among those portions of the life of operations area in which surface coal mining operations occurred –
 - (i) Prior to August 3, 1977;
 - (ii) After August 3, 1977, and prior to May 3, 1978;
 - (iii) After May 3, 1978, and prior to (the effective date of the State program will be supplied);
 - (iv) After the estimated date of issuance of a permit by the Director.

SECTION 771.25

PERMIT FEES

12-05-97

- (a) General Requirements.
 - (1) The application for a surface coal mining and reclamation permit pursuant to the State program shall be accompanied by a \$500 permit review fee. This permit review fee shall cover review of the application, and all revisions submitted by the applicant during the permit review process.
 - (2) The request for a coal exploration approval for the removal of greater than 250

tons pursuant to the State program shall be accompanied by a \$250 request review fee and a \$250 administrative and enforcement fee. These fees shall cover the necessary review of the request and the administrative and enforcement duties required by the State program.

- (b) Prior to issuance of the permit and on the anniversary date of the permit in each subsequent year, the applicant shall submit to the Division an annual administration and enforcement fee.
 - (1) The administration and enforcement fee shall be:
 - (i) Equal to \$600.00; and
 - (ii) Payable through the entire life of the permit.
 - (2) The administration and enforcement fee may be paid out in two (2) equal installments of \$300.00 each. If the applicant chooses to pay the administration and enforcement fee in installments, he or she shall:
 - (i) Submit a written request to the Director, prior to issuance of the permit, stating that he or she wishes to make such payments; and
 - (ii) Enter into an agreement with the Division stating that he or she shall:
 - (A) Make the first payment of \$300.00 prior to issuance of the permit; and
 - (B) Make the final payment of \$300.00 within six (6) months from the date of issuance of the permit.
- (c) On any anniversary date:
 - (1) If the information contained in the maps submitted pursuant to Sections 780.14 or 784.23 differs from the applicant's actual operations in a manner that would affect the annual administration and enforcement fee, the applicant shall revise the maps to reflect those differences and submit the revised map with the annual permit fee;
 - (2) If the permittee's actual operations for the prior year differed from the estimate made in the prior year for the purpose of determining the administration and enforcement fee, and the permittee has not paid the difference, he shall add the difference for any under payment or deduct any overpayment from the current administration and enforcement fee. If a refund is due, the Director shall refund the appropriate amount to the permittee.

Each application for permit shall be verified under oath, by a responsible official of the applicant, that the information contained in the application is true, and correct to the best of the official's information and belief.

PART 776 -- GENERAL REQUIREMENTS FOR COAL EXPLORATION OPERATIONS

SECTION

776.1	Scope
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SECTION 776.1 SCOPE

5-29-80

This Part establishes the minimum requirements for coal exploration procedures. This part applies to the Division and to any person who conducts or seeks to conduct coal explorations outside the permit area.

SECTION 776.2 OBJECTIVES

5-29-80

The objectives of this part are to insure that coal exploration operations are conducted to protect the environment and otherwise meet the requirements of the Act, this Chapter, and the State program.

SECTION 776.3 RESPONSIBILITIES

5-29-80

- (a) It is the responsibility of any person conducting or seeking to conduct coal exploration operations under the State program to comply with the requirements of this Part.
- (b) It is the responsibility of the Director to receive notices of intention to explore and applications for approval of exploration, approve or disapprove the applications, and to issue, condition, suspend or revoke approval under the State program.

SECTION 776.11 GENERAL REQUIREMENTS: EXPLORATION
OPERATIONS OF LESS THAN 250 TONS

10-29-92

- (a) Any person who intends to conduct coal exploration operations during which less than 250 tons of coal will be removed in any one location shall, prior to conducting the operations, file with the Division a written notice of intention to explore.
- (b) The notice shall include –
 - (1) The name, address, and telephone number of the person seeking to explore;
 - (2) The name, address, and telephone number of the representative who will be present at and responsible for conducting the exploration activities;
 - (3) A narrative describing the proposed exploration area or a map at a scale of 1:24,000, or greater, showing the proposed area of exploration and the general location of drill holes and trenches, existing and proposed roads, occupied dwellings, topographic features, bodies of surface water, and pipelines;
 - (4) A statement of the period of intended exploration; and
 - (5) RESERVED
 - (6) A description of the practices proposed to be followed to protect the environment from adverse impact as a result of the exploration activities.
- (c) Any person who conducts coal exploration activities pursuant to this Section which substantially disturb the natural land surface shall comply with 30 CFR 815.
- (d) The Division shall, except as provided in Section 776.17, place such notices on public file and make them available for public inspection and copying.

SECTION 776.12 PERMIT REQUIREMENTS FOR EXPLORATION THAT WILL
REMOVE MORE THAN 250 TONS OF COAL OR THAT WILL
OCCUR ON LANDS DESIGNATED AS UNSUITABLE FOR
SURFACE COAL MINING OPERATIONS

8-23-02

- (a) Exploration permit. Any person who intends to conduct coal exploration outside a permit area during which more than 250 tons of coal will be removed or which will take place on

lands designated as unsuitable for surface mining under Subchapter F of this chapter, shall, before conducting the exploration, submit an application and obtain written approval from the Director in an exploration permit. Such exploration shall be subject to the requirements prescribed under Sections 776.15 and 815.17.

- (b) Application information. Each application for an exploration permit shall contain, at a minimum, the following information:
- (1) The name, address, and telephone number of the applicant.
 - (2) The name, address and telephone number of the applicant's representative who will be present at, and responsible for, conducting the exploration activities.
 - (3) A narrative describing the proposed exploration area.
 - (4) A narrative description of the methods and equipment to be used to conduct the exploration and reclamation.
 - (5) An estimated timetable for conducting and completing each phase of the exploration and reclamation.
 - (6) The estimated amount of coal to be removed and a description of the methods to be used to determine the amount.
 - (7) A statement of why extraction of more than 250 tons of coal is necessary for exploration.
 - (8) A description of –
 - (i) Cultural or historical resources listed on the National Register of Historic Places;
 - (ii) Cultural or historical resources known to be eligible for listing on the National Register of Historic Places; and
 - (iii) Known archeological resources located within the proposed exploration area.
 - (iv) Any other information which the Director may require regarding known or unknown historic or archeological resources.
 - (9) A description of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) identified within the proposed exploration area.
 - (10) A description of the measures to be used to comply with the applicable requirements of part 815 of this chapter.

- (11) The name and address of the owner of record of the surface land and of the subsurface mineral estate of the area to be explored.
 - (12) A map or maps at a scale of 1:24,000, or larger, showing the areas of land to be disturbed by the proposed exploration and reclamation. The map shall specifically show existing roads, occupied dwellings, topographic and drainage features, bodies of surface water, and pipelines; proposed locations of trenches, roads, and other access routes and structures to be constructed; the location of proposed land excavations; the location of exploration holes or other drill holes or underground openings; the location of excavated earth- or waste- material disposal areas; and the location of critical habitats of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).
 - (13) If the surface is owned by a person other than the applicant, a description of the basis upon which the applicant claims the right to enter that land for the purpose of conducting exploration and reclamation.
 - (14) For any lands listed in Section 761.11 of this chapter, a demonstration that, to the extent technologically and economically feasible, the proposed exploration activities have been designed to minimize interference with the values for which those lands were designated as unsuitable for surface coal mining operations. The application must include documentation of consultation with the owner of the feature causing the land to come under the protection of Section 761.11 of this chapter, and, when applicable, with the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of Section 761.11 of this chapter.
- (c) Public notice and opportunity to comment. Public notice of the application and opportunity to comment shall be provided as follows:
- (1) Within such time as the Director may designate, the applicant shall provide public notice of the filing of an administratively complete application with the Division in a newspaper of general circulation in the county of the proposed exploration area.
 - (2) The public notice shall state the name and address of the person seeking approval, the filing date of the application, the address of the Division where written comments on the application may be submitted, the closing date of the comment period, and a description of the area of exploration.
 - (3) Any person having an interest which is or may be adversely affected shall have the right to file written comments on the application within reasonable time limits.

- (d) Decisions on applications for exploration.
- (1) The Director shall act upon an administratively complete application for a coal exploration permit and any written comments within a reasonable period of time. The approval of a coal exploration permit may be based only on a complete and accurate application.
 - (2) The Director shall approve a complete and accurate application for a coal exploration permit filed in accordance with this part if he finds, in writing, that the applicant has demonstrated that the exploration and reclamation described in the application will –
 - (i) Be conducted in accordance with this part, part 815 of this chapter, and the applicable provisions of the State program;
 - (ii) Not jeopardize the continued existence of an endangered or threatened species listed pursuant to section 4 of the Endangered Species Act of 1973, 16 U.S.C. 1533, or result in the destruction or adverse modification of critical habitat of those species;
 - (iii) Not adversely affect any cultural or historical resources listed on the National Register of Historic Places pursuant to the National Historic Preservation Act, 16 U.S.C. 470 et seq., unless the proposed exploration has been approved by both the Director and the agency with jurisdiction over the resources to be affected; and
 - (iv) With respect to exploration activities on any lands protected under Section 761.11 of this chapter, minimize interference, to the extent technologically and economically feasible, with the values for which those lands were designated as unsuitable for surface coal mining operations. Before making this finding, the Director must provide reasonable opportunity to the owner of the feature causing the land to come under the protection of Section 761.11 of this chapter, and, when applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of Section 761.11 of this chapter, to comment on whether the finding is appropriate.
 - (3) Terms of approval issued by the Director shall contain conditions necessary to ensure that the exploration and reclamation will be conducted in compliance with this part, part 815 of this chapter, and the State program.
- (e) Notice and hearing.
- (1) The Director shall notify the applicant, the appropriate local government officials, and other commentors on the application, in writing, of his decision on the application. If the application is disapproved, the notice to the applicant shall include

a statement of the reason for disapproval. Public notice of the decision on each application shall be posted by the Director at a public office in the vicinity of the proposed exploration operations.

- (2) Any person having an interest which is or may be adversely affected by a decision of the Director pursuant to paragraph (e)(1) of this section shall have the opportunity for administrative and judicial review as set forth in part 787 of this chapter.

SECTION 776.13 APPLICATIONS: APPROVAL OR DISAPPROVAL OF
EXPLORATION OF MORE THAN 250 TONS

5-29-80

- (a) The Director shall act upon a completed application for approval within the time specified in Section 786.23.
- (b) The Director may approve a complete application filed in accordance with this Part, if he finds in writing that the applicant has demonstrated that the exploration and reclamation operations described in the application –
 - (1) Will be conducted in accordance with the requirements of the Act, Part 815, this Part, and the State program;
 - (2) Will not jeopardize the continued existence of an endangered or threatened species listed pursuant to Section 4 of the Endangered Species Act of 1973 (16 U.S.C. Section 1531 et seq.) or result in the destruction or adverse modification of critical habitat of such species, and
 - (3) Will not adversely affect any cultural resources or districts, sites, buildings, structures, or objects listed or eligible for listing on the National Register of Historic Places, unless the proposed operations have been approved by the Director after consulting with the Division of Arkansas Natural and Cultural Heritage.
- (c) Terms of Approval. Each approval issued by the Director shall contain conditions necessary to ensure that the exploration operations will be conducted in compliance with the Act, the provisions of Part 815, this Part and the State program.

SECTION 776.14 APPLICATIONS: NOTICE AND HEARING FOR
EXPLORATION OF MORE THAN 250 TONS

5-01-87

- (a) The Director shall notify the applicant, the appropriate local government official, and other commenters on the application, in writing of his decision to approve or disapprove the application. If the application is disapproved, the notice to the applicant shall include a statement of the reason for disapproval. The Division shall provide public notice of approval or disapproval of each application by publication in a newspaper of general circulation in the general vicinity of the proposed operation.
- (b) Any person with interests which are or may be adversely affected by a decision of the Director pursuant to paragraph (a) above, shall have the opportunity for administrative and judicial review as set forth in Part 787.

SECTION 776.15 COAL EXPLORATION COMPLIANCE DUTIES

5-29-80

- (a) All coal exploration and reclamation operations which substantially disturb the natural land surface or which remove more than 250 tons of coal shall be conducted in accordance with the coal exploration operations requirements of the Act, this Part, Part 815 and the State program, and any conditions of the approval for such operations imposed by the Director.
- (b) Any person who conducts any coal exploration operations in violation of the Act, the provisions of this Part, Part 815, or the State program shall be subject to the provisions of Section 18 of the Act, Subchapter L of this Chapter, and the appropriate inspection and enforcement provisions of the State program.

SECTION 776.17 PUBLIC AVAILABILITY OF INFORMATION

5-29-80

- (a) Except as provided in paragraph (b), of this Section all information submitted to the Division under this Part shall be made available for public inspection and copying at the central office.
- (b)
 - (1) The Division shall not make information available for public inspection if the person submitting it requests in writing at the time of submission that it not be disclosed and the Division determines that the information is confidential.
 - (2) The Division shall determine that information is confidential only if it concerns trade secrets or is privileged commercial or financial

information which relates to the competitive rights of the person intending to conduct exploration operations.

- (3) Information requested to be held as confidential under this Section shall not be made publicly available until after notice and opportunity to be heard is afforded both persons seeking and opposing disclosure of the information.

PART 778 -- SURFACE MINING PERMIT APPLICATIONS – MINIMUM
REQUIREMENTS FOR LEGAL, FINANCIAL, COMPLIANCE AND RELATED
INFORMATION

SECTION

778.1	Scope
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778.4	Responsibility
778.11	Applicability
778.13	Identification of Interests
778.14	Compliance Information
778.15	Right of Entry and Operation Information
778.16	Relationship to Areas Designated Unsuitable for Mining
778.17	Permit Term Information
778.18	Personal Injury and Property Damage Insurance Information
778.19	Identification of Other Licenses and Permits
778.20	Identification of Location of Public Office for Filing of Application
778.21	Newspaper Advertisement and Proof of Publication

SECTION 778.1 SCOPE

5-29-80

This Part establishes the minimum requirements regarding the legal, financial, compliance and general information that must be contained in permit applications for surface mining activities except for underground coal mining activities.

SECTION 778.2 OBJECTIVE

5-29-80

The objective of this Part is to ensure that all relevant information regarding the ownership and control of the persons who conduct surface mining activities, the ownership and control of the property to be affected by the operations, the compliance status and history of such persons, and other important information is provided in the application to the Division.

SECTION 778.4 RESPONSIBILITY

5-29-80

It is the responsibility of the permit applicant to provide to the Division all of the information required by this Part.

SECTION 778.11

APPLICABILITY

5-29-80

This part applies to any person who applies for a permit to conduct surface mining activities.

SECTION 778.13

IDENTIFICATION OF INTERESTS

6-03-92

- (a) Each application shall contain the names and addresses, and, as applicable, the employer identification number, and, on a voluntary basis only, the social security number of --
 - (1) The permit applicant, including his or her telephone number;
 - (2) Every legal or equitable owner of record of the property to be mined;
 - (3) The holders of record of any leasehold interest in the property to be mined;
 - (4) Any purchaser of record under a real estate contract of the property to be mined;
 - (5) The operator, if the operator is a person different from the applicant, including his or her telephone number;
 - (6) The resident agent of the applicant who will accept service of process, including his or her telephone number; and,
 - (7) The person who will pay the abandoned mine land reclamation fee, including his or her telephone number.
- (b) Each application shall contain for each person who owns or controls the applicant under the definition of "owned or controlled" and "owns and controls" in Section 786.5(c) of this chapter, as applicable:
 - (1) The person's name, address, employer identification number, and, on a voluntary basis only, social security number;
 - (2) The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;
 - (3) The title of the person's position, date position was assumed, and when submitted under Section 786.27(d) of this chapter, date of departure from the position;
 - (4) Each additional name and identifying number, including employer identification number, Federal or State permit number, and MSHA number with date of

issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five years preceding the date of the application; and

- (5) The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any State in the United States.
- (c) For any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in Section 786.5(c) of this chapter, the operation's:
 - (1) Name, address, identifying numbers, including employer identification number, Federal or State permit number and MSHA number, the date of issuance of the MSHA number, and the regulatory authority; and
 - (2) Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure.
- (d) Each application shall contain the names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area.
- (e) Each application shall contain the name of the proposed mine and the Mine Safety and Health Administration identification number for the mine and all sections, if any.
- (f) Each application shall contain a statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands which are contiguous to the area to be covered by the permit.
- (g) After an applicant is notified that his or her application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under paragraphs (a) through (c) of this section.
- (h) The applicant shall submit the information required by this section and by Section 778.14 of this part in any prescribed format that is issued by the Director or by OSM.

SECTION 778.14 COMPLIANCE INFORMATION

6-03-92

Each permit application shall contain –

- (a) A statement of whether the applicant, any subsidiary, affiliate or persons controlled by or under common control with the applicant has –

- (1) Had a Federal or State mining permit suspended or revoked in the last five (5) years; or
 - (2) Forfeited a coal mining bond or similar security deposited in lieu of bond.
- (b) If any such suspension, revocation, or forfeiture has occurred, a statement of the facts involve, including –
 - (1) Identification number and date of issuance of the permit or date and amount of bond or similar security;
 - (2) Identification of the authority that suspended or revoked a permit or forfeited a bond, and the stated reasons for the action;
 - (3) The current status of the permit, bond or similar security involved;
 - (4) The date, location and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and
 - (5) The current status of these proceedings.
- (c) For any violation of a provision of the Act, or of any law, rule or regulation of the United States, or of any State law, rule or regulation enacted pursuant to Federal law, rule or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violation notices received by the applicant during the three (3) year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned and controlled by either the applicant or by any person who owns or controls the applicant. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:
 - (1) Any identifying numbers for the operation, including the Federal or State permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department or agency;
 - (2) A brief description of the particular violation alleged in the notice;
 - (3) The date, location and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by the applicant to obtain administrative or judicial review of the violations;

- (4) The current status of the proceedings and the violation notice; and
 - (5) The actions, if any, taken by the applicant to abate the violation.
- (d) After an applicant is notified that his or her application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under this section.

SECTION 778.15 RIGHT OF ENTRY AND OPERATION INFORMATION
5-29-80

- (a) Each permit application shall contain a description of those documents upon which the applicant bases his legal right to enter and begin surface mining operations in the permit area and whether that right is the subject of pending litigation. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.
- (b) Where the private mineral estate to be mined has been severed from the private surface estate the application shall also provide for lands within the permit area –
- (1) A copy of the written consent of the surface owner to the extraction of coal by surface mining methods; or
 - (2) A copy of the document of conveyance that expressly grants or reserves the right to extract the coal by surface mining methods; or
 - (3) If the conveyance does not expressly grant the right to extract the coal by surface mining methods; documentation that under Arkansas law, the applicant has the legal authority to extract the coal by those methods.
- (c) Nothing shall be construed to authorize the Division to adjudicate property title disputes.

SECTION 778.16 RELATIONSHIP TO AREAS DESIGNATED UNSUITABLE
FOR MINING
8-23-02

- (a) Each application shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for surface coal mining under Part 764 or under study for designation in an administration proceeding in under those parts.

- (b) If an applicant claims the exemption in Part 786.19(d)(2), the application shall contain information supporting the applicant's assertion that it made substantial legal and financial commitments before January 4, 1977, concerning the proposed surface mining activities.
- (c) If an applicant proposes to conduct surface coal mining operations within 100 feet of a public road or 300 feet of an occupied dwelling, the application must meet the requirements of Section 761.14 or 761.15 of this chapter, respectively.

SECTION 778.17 PERMIT TERM INFORMATION

5-29-80

- (a) Each permit application shall state the anticipated or actual starting and termination date of each phase of the surface mining activities and the anticipated number of acres to be disturbed in each phase of mining and over the total life of the permit.
- (b) If the applicant proposes to conduct the operations in excess of five (5) years, the application shall contain the information needed for the showing required under Section 786.25(a).

SECTION 778.18 PERSONAL INJURY AND PROPERTY INSURANCE INFORMATION

12-05-97

Each permit application shall contain either a certificate of liability insurance or evidence that the self-insurance requirements in Section 800.60 of this Chapter are satisfied.

SECTION 778.19 IDENTIFICATION OF OTHER LICENSES AND PERMITS

5-29-80

Each permit application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed mining operation. This list shall identify each license and permit by –

- (a) Type of permit or license;
- (b) Name and address of issuing authority;
- (c) Identification numbers of applications for permits or licenses or, if issued, the identification numbers of the permits or licenses; and
- (d) If a decision has been made, the date of approval or disapproval by each issuing authority.

SECTION 778.20

IDENTIFICATION OF LOCATION OF PUBLIC OFFICE FOR
FILING OF APPLICATION

5-29-80

Each application shall identify, by city and county, the Circuit Clerk's office where the applicant will simultaneously file a copy of the application for public inspection in accordance with Part 786.11(e).

SECTION 778.21

NEWSPAPER ADVERTISEMENT AND PROOF OF
PUBLICATION

5-29-80

A copy of the newspaper advertisement of the application and proof of publication of the advertisement shall be filed with the Division and made a part of the complete application, not later than four (4) weeks after the last date of publication required under Section 786.11(a).

**PART 779 -- SURFACE MINING PERMIT APPLICATIONS – MINIMUM
REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES**

SECTION

779.1	Scope
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779.12	General Environmental Resources Information
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779.24	Maps: General Requirements
779.25	Cross-sections, Maps, and Plans
779.27	Prime Farmland Investigation

SECTION 779.1 SCOPE

5-29-80

This part establishes the minimum requirements for the environmental resources contents of applications for surface mining activities.

SECTION 779.2 OBJECTIVES

5-29-80

The objectives of this part are to ensure that each application provides to the Division a complete and accurate description of the environmental resources that may be impacted or affected by the proposed surface coal mining activities.

SECTION 779.4 RESPONSIBILITIES

5-29-80

- (a) It is the responsibility of the applicant to provide all information in the application required by this part, except where specifically exempted in this Part.
- (b) It is the responsibility of the Director to provide an application form.

SECTION 779.11

GENERAL REQUIREMENTS

10-29-92

Each permit application shall include a description of the existing, premining environmental resources within the permit area and adjacent areas that may be affected or impacted by the proposed surface mining activities.

SECTION 779.12

GENERAL ENVIRONMENTAL INFORMATION

RESOURCES

10-29-92

Each application shall describe and identify –

- (a) The size, sequence, and timing of the sub-areas of the life of operations area for which it is anticipated that individual permits for mining will be requested over the estimated total life of the proposed surface mining activities; and
- (b) The nature of cultural and historic resources listed or eligible for listing on the National Register of Historic Places and known archeological features within the proposed permit and adjacent areas. The description shall be based on all available information, including, but not limited to, data of the Department of Arkansas Natural and Cultural Heritage. The Director may require the applicant to identify and evaluate important historic and archeological resources that may be eligible for listing on the National Register of Historic Places through collection of additional information, by conducting field investigation or other appropriate analyses.

SECTION 779.14

GEOLOGY DESCRIPTION

5-01-87

- (a) General. Each application shall include geologic information in sufficient detail to assist in determining –
 - (1) The probable hydrologic consequences of the operation upon the quality and quantity of surface and groundwater in the permit and adjacent areas, including the extent to which surface-and ground-water monitoring is necessary;
 - (2) All potentially acid- or toxic-forming strata down to and including the stratum immediately below the lowest coal seam to be mined; and
 - (3) Whether reclamation as required by this Chapter can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

(b)

- (1) Test borings and core samples from the permit and adjacent shall be analyzed down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest coal seam to be mined which may be adversely impacted by mining to provide the following data:
 - (i) Location of subsurface waters, if encountered;
 - (ii) Logs of drill holes showing the lithologic characteristics and thickness of each stratum and each coal seam;
 - (ii) Physical properties of each stratum within the overburden including compaction and erodibility;
 - (iii) Chemical analysis of each stratum within the overburden and the stratum immediately underneath the lowest coal seam to be mined to identify, at a minimum, those horizons which contain potential acid-forming, toxic-forming, or alkalinity producing materials; and
 - (iv) Analysis of the coal seam including, but not limited to, an analysis of the sulfur and pyrite/marcasite (iron sulfide) content.
- (2) If required by the Division, test borings or core samplings shall be collected and analyzed to greater depths and in greater detail within the proposed permit area, or for areas outside the proposed permit area to provide for evaluation of the impact of the proposed activities on the hydrologic balance.
- (3) An applicant may request that the requirement for a statement of the results of the test borings or core samplings from the permit area be waived by the Division. The waiver may be granted only if the Division makes a written determination that the statement is unnecessary because other equivalent information is accessible in a satisfactory form.

SECTION 779.18

CLIMATOLOGICAL INFORMATION

10-29-92

- (a) When requested by the Division, the permit application shall contain a statement of the climatological quality factors that are representative of the permit area, including –
 - (1) The average seasonal precipitation;

- (2) The average direction and velocity of prevailing winds;
- (3) Seasonal temperature ranges;
- (4) Such additional information as the Director deems necessary.

SECTION 779.19 VEGETATION INFORMATION

12-05-97

- (a) The permit application shall, if required by the Director, contain a map that delineates existing vegetative types and a description of the plant communities within the proposed permit area and within any proposed reference area. This description shall include information adequate to predict the potential for re-establishing vegetation.
- (b) When a map or aerial photograph is required, sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for those species of fish and wildlife identified under Section 780.16.

SECTION 779.21 ANALYSES OF SELECTED OVERBURDEN OR TOPSOIL MIXTURES

10-29-92

- (a) For all lands within the permit area which may be prime farmland as identified by the investigation carried out under Section 779.27 of this Part, the applicant shall provide adequate soil survey information of those lands consisting of the following:
 - (1) A map delineating different soils;
 - (2) Soil identification;
 - (3) Soil description; and
 - (4) Present and potential productivity of existing soils.
- (b) Where the applicant proposes to use selected overburden materials instead of, or as a supplement to topsoil, the application shall contain the results of any analyses, trials and tests required under Section 816.22.

The permit application shall include maps showing –

- (a) All boundaries of lands and names of present owners of record of lands, both surface and sub-surface, included in or contiguous to the permit area;
- (b) The boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin surface mining operations;
- (c) The boundaries of all areas proposed to be affected over the estimated total life of the proposed surface mining operations, with a description of size, sequence, and timing of the mining of sub-areas for which it is anticipated that additional permits will be sought;
- (d) The location of all buildings on and within 1,000 feet of the proposed permit area, with identification of the current use of the buildings;
- (e) The location of surface and subsurface man-made features within, or passing through or over the proposed permit area, including, but not limited to major electric transmission lines, pipelines, and agricultural drainage tile fields;
- (f) The location and boundaries of any proposed reference areas determining the success of revegetation;
- (g) The locations of water supply intakes for current users of surface water flowing into, out of, and within a hydrologic area defined by the Division and those surface waters which will receive discharges from affected areas in the proposed permit area;
- (h) Each public road located in or within 100 feet of the proposed permit area;
- (i) The boundaries of any State or public park, recreation areas, memorials and locations of any cultural or historical resources listed or eligible for listing in the National Register of Historic Places and known archeological sites within the permit or adjacent areas;
- (j) Each public or private cemetery or Indian burial ground located in or within 100 feet of the proposed permit area;
- (k) Any land within the proposed permit area and adjacent area which is within the boundaries of any State Game and Fish Commission Wildlife Management Area or any units of the National System of Trails or the Wild and Scenic Rivers System including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act; and
- (l) Any other information required by the Division.

The application shall include cross-sections, maps and plans showing –

- (a) Elevations and locations of test borings and core samplings;
- (b) Elevations and locations of monitoring stations used to gather data for water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application;
- (c) Nature, depth, and thickness of coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined;
- (d) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;
- (e) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit and adjacent areas;
- (f) Location and extent of sub-surface water, if encountered, within the proposed permit or adjacent areas;
- (g) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drains, and irrigation ditches within the proposed permit and adjacent areas;
- (h) Location and extent of existing or previously surface-mined areas within the proposed permit area;
- (i) Location, and dimensions of existing areas of spoil, waste, and non-coal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the proposed permit area;
- (j) Location and depth, if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent area;
- (k) [RESERVED]
- (l) Maps, plans, and cross sections included in a permit application which are required by this Section shall be prepared by or under the direction of and certified by a qualified registered professional engineer or professional geologist, with assistance from experts in related fields such as land surveying and landscape architecture and shall be updated as required by the Director.

[Ed. Note: In Section 779.25, Paragraphs (c), (h), and (i) are suspended to the extent that they apply to underground mining permit applications.]

SECTION 779.27

PRIME FARMLAND INVESTIGATION

10-29-92

- (a) The applicant shall conduct a pre-application investigation of the proposed permit area to determine whether lands within the area may be prime farmland.
- (b) Land shall not be considered prime farmland where the applicant can demonstrate one of the following –
 - (1) The land has not been historically used as cropland;
 - (2) The slope of the land is 10 percent or greater;
 - (3) The land is not irrigated or naturally sub-irrigated, has no developed water supply that is dependable or of adequate quality, and the average annual precipitation is 14 inches or less;
 - (4) Other factors exist, such as a very rocky surface, or the land is frequently flooded during the growing season, more often than once in two (2) years, and the flooding has reduced crop yields; or
 - (5) On the basis of a soil survey of lands within the permit area, there are no soil map units that have been designated prime farmland by the Natural Resources Conservation Service.
- (c) If the investigation establishes that the lands are not prime farmland, the applicant shall submit with the permit application a request for a negative determination which shows that the land for which the negative determination is sought meets one of the criteria of Paragraph (b) of this Section.
- (d) If the investigation indicates that lands within the proposed permit area may be prime farmlands, the applicant shall contact the Natural Resources Conversation Service to determine if a soil survey exists for those lands and whether the applicable soil map units have been designated as prime farmlands. If no soil survey has been made for the lands within the proposed permit area, the applicant shall cause such a survey to be made.
 - (1) When a soil survey of lands within the proposed permit area contains soil map units which have been designated as prime farmlands, the applicant shall submit an application, in accordance with Section 785.17 for such designated land.

- (2) When a soil survey for lands within the proposed permit area contains soil map units which have not been designated as prime farmland after review by the Natural Resources Conservation Service, the applicant shall submit a request for negative determination for non-designated land with the permit application establishing compliance with Paragraph (b) of this Section.

PART 780 -- SURFACE MINING PERMIT APPLICATION -- MINIMUM
REQUIREMENT FOR RECLAMATION AND OPERATION PLAN

SECTION

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SECTION 780.1 SCOPE

5-29-80

This part provides the requirements for the Division's approval of mining operations and reclamation plan portions of applications for permits for surface coal mining activities, except to the extent that different requirements for those plans are established under Part 785 of this Subchapter.

SECTION 780.2 OBJECTIVES

5-29-80

The objectives of this part are to ensure that the Division is provided with comprehensive and reliable information on proposed surface mining activities, and to ensure that these activities are allowed to be conducted in compliance with the Act, this Chapter, and the State program.

SECTION 780.4

RESPONSIBILITIES

5-29-80

- (a) It is the responsibility of the applicant to provide to the Division all of the information required by this part, except where specifically exempted in this part.
- (b) It is the responsibility of State and Federal governmental agencies to provide information to the Division where specifically required in this part.

SECTION 780.11

OPERATION PLAN: GENERAL REQUIREMENTS

10-29-92

Each application shall contain a description of the mining operations proposed to be conducted during the life of the mine within the proposed permit area, including, at a minimum, the following:

- (a) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and
- (b) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of such facilities is necessary for postmining land use as specified in Section 816.133):
 - (1) Dams, embankments, and other impoundments;
 - (2) Overburden and topsoil handling and storage areas and structures;
 - (3) Coal removal, handling, storage, cleaning, and transportation areas and structures;
 - (4) Spoil, and processing waste, and non-coal waste removal, handling, storage, transportation, and disposal areas and structures;
 - (5) Mine facilities; and
 - (6) Water and air pollution control facilities.

- (a) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include
- (1) Location;
 - (2) Plans of the structure which describe its current condition;
 - (3) Approximate dates on which construction of the existing structure was begun and completed; and
 - (4) A showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards of Subchapter K (Permanent Program Standards) of this Chapter or, if the structure does not meet the performance standards of Subchapter K of this Chapter, a showing whether the structure meets the performance standards of Subchapter B (Interim Program Standards) of 30 CFR Chapter 7.
- (b) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include
- (1) Design specifications for the modification or reconstruction of the structure to meet the design and performance standards of Subchapter K of this Chapter;
 - (2) A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;
 - (3) Provisions for monitoring the structure during and after modification or reconstruction to ensure that the performance standards of Subchapter K of this Chapter are met; and
 - (4) A showing that the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction.

Each application shall contain a blasting plan for the proposed permit area, explaining how the applicant intends to comply with the requirements of 30 CFR Sections 816.61 through 816.68 and

including the following information:

- (a) Types and approximate amounts of explosives to be used for each type of blasting operation to be conducted;
- (b) Description of procedures and plans for recording and retention of information or the following during blasting
 - (1) Drilling patterns, including size, number, depths, and spacing of holes;
 - (2) Charge and packing of holes;
 - (3) Types of fuses and detonation controls; and
 - (4) Sequence and timing of firing holes.
- (c) Description of blasting warning and site access control equipment and procedures;
- (d) Description of types, capabilities, sensitivities, and locations of use of any blasting monitoring equipment and procedures proposed to be used;
- (e) Description of plans for recording and reporting to the Division the results of preblasting surveys, if required, and;
- (f) Description of unavoidable hazardous conditions for which deviations from the blasting schedule will be needed under Section 816.65(b).

SECTION 780.14

OPERATION PLAN: MAPS AND PLANS

10-29-92

Each application shall contain maps and plans of the proposed permit and adjacent areas as follows:

- (a) The maps and plans shall show the land proposed to be effected throughout the operation and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under Section 779.24 - 779.25.
- (b) The following shall be shown for the proposed permit area unless specifically required for the adjacent area by the requirements of this Section:
 - (1) Buildings, utility corridors and facilities to be used;
 - (2) The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;

- (3) Each area of land for which a performance bond or other equivalent guarantee will be posted under Subchapter J of this Chapter;
 - (4) Coal storage, cleaning and loading area;
 - (5) Each topsoil, spoil, coal waste, and non-coal waste storage area;
 - (6) Each water diversion, collection, conveyance, treatment, storage, and discharge facility to be used;
 - (7) Each air pollution collection and control facility;
 - (8) Each source of waste and each waste disposal facility relating to coal processing or pollution control;
 - (9) Each facility to be used to protect and enhance fish and wildlife and related environmental values;
 - (10) Each explosive storage and handling facility; and
 - (11) Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with Section 780.25 and fill area for disposal of excess spoil in accordance with Section 780.35.
- (c) Maps, plans, and cross-sections required under Paragraphs (b)(4), (5), (6), (10), and (11) of this Section shall be prepared by, or under the direction of and certified by qualified registered professional engineer, or professional geologist, with assistance from experts in related fields such as land surveying and landscape architecture except that
- (1) Maps, plans, and cross-sections for sedimentation ponds may only be prepared by a qualified registered professional engineer; and
 - (2) Spoil disposal facilities, maps, plans, and cross-sections may only be prepared by a qualified registered professional engineer.

SECTION 780.15

AIR POLLUTION CONTROL PLAN

5-29-80

Each application shall contain an air pollution control plan which includes the following:

- (a) If requested by the Director, an air quality monitoring program to provide sufficient data to

evaluate the effect of the fugitive dust control practices under Paragraph (b) of this Section to comply with applicable Federal and State air quality standards; and

- (b) A plan for fugitive dust control practices, as required under Section 816.95.

SECTION 780.16 FISH AND WILDLIFE PLAN

11-14-89

- (a) Resource information. Each application shall include fish and wildlife resource information for the permit area and adjacent area.
 - (1) The scope and level of detail for such information shall be determined by the regulatory authority in consultation with State and Federal agencies with responsibilities for fish and wildlife and shall be sufficient to design the protection and enhancement plan required under paragraph (b) of this section.
 - (2) Site-Specific resource information necessary to address the respective species or habitats shall be required when the permit area or adjacent area is likely to include:
 - (i) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary under the Endangered Species Act of 1973, as amended (16.U.S.C 1531 et. seq.), or those species or habitats protected by similar State statutes;
 - (ii) Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas; or
 - (iii) Other species or habitats identified through agency consultation as requiring special protection under State or Federal law.
- (b) Protection and enhancement plan. Each application shall include a description of how, to extent possible using the best technology currently available, the operator will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, during the surface coal mining and reclamation operations and how enhancement of these resources will be achieved where practicable. This description shall –
 - (1) Be consistent with the requirements of 816.97 of this chapter;
 - (2) Apply, at a minimum, to species and habitats identified under paragraph (a) of

this section; and

(3) Include –

- (i) Protective measures that will be used during the active mining phase of operation. Such measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines, and the monitoring of surface water quality and quantity; and
 - (ii) Enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Such measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the replacement of perches and nest boxes. Where the plan does not include enhancement measures, a statement shall be given explaining why enhancement is not practicable.
- (c) Fish and Wildlife Service review. Upon request, the Division shall provide the resource information required under paragraph (a) of this section and the protection and enhancement plan required under paragraph (b) of this section to the U.S. Department of the Interior, Fish and Wildlife Service Regional or Field Office for their review. This information shall be provided within 10 days of receipt of the request from the Service.

SECTION 780.18

RECLAMATION PLAN: GENERAL REQUIREMENTS

5-27-99

- (a) Each application shall contain a plan for reclamation of the lands within the proposed permit area, showing how the applicant will comply with the Act, Subchapter K of this Chapter and the environmental protection performance standards of the State program. The plan shall include at a minimum, all information required under Section 780.18-780.37.
- (b) Each plan shall contain the following information for the proposed permit area:
 - (1) A detailed timetable for the completion of each major step in the reclamation plan;
 - (2) A detailed estimate of the cost of reclamation of the proposed operations required to be covered by a performance bond under Subchapter J of this Chapter, with supporting calculations for the estimates;
 - (3) A plan for backfilling, soil stabilization, compacting, and grading, with cross sections that show the anticipated final surface configuration of the proposed permit area in accordance with Sections 816.101-816.105.

- (4) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of Section 816.22 of this chapter. A demonstration of the suitability of topsoil substitutes or supplements under 816.22(b) of this Chapter shall be based upon analysis of the thickness of soil horizons, total depth, texture, percent coarse fragments, pH, and aerial extent of the different kinds of soils. The Division may require other chemical and physical analysis, field-site trials, or greenhouse tests if determined to be necessary or desirable to demonstrate the suitability of the topsoil substitutes or supplements.
- (5) A plan for revegetation as required in Sections 816.111 through 816.117 including but not limited to descriptions of the-
 - (i) Schedule of revegetation;
 - (ii) Species and amounts per acre of seeds and seedlings to be used;
 - (iii) Methods to be used in planting and seeding;
 - (iv) Mulching techniques;
 - (v) Irrigation, if appropriate and pest and disease control measures, if any;
 - (vi) Measures proposed to be used to determine the success of revegetation as required in Section 816.116; and
 - (vii) A soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation.
- (6) A description of the measures to be used to maximize the use and conservation of the coal resource as required in Section 816.59;
- (7) A description of measures to be employed to insure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with Section 816.89 and 816.102(f) and a description of the contingency plans which have been developed to preclude sustained combustion of such materials;
- (8) A description, including appropriate cross sections and maps, of the measures to be used to seal or manage mine openings, and to plug, case or manage exploration holes, other bore holes, wells, and other openings within the proposed permit area in accordance with Sections 816.13 through 816.15; and

- (9) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 U.S.C. Sec. 7401 et seq), the Clean Water Act (33 U.S.C. Sec. 1251 et seq), and other applicable air and water quality laws and regulations and health and safety standards.

SECTION 780.21

RECLAMATION PLAN: HYDROLOGIC INFORMATION

12-05-97

- (a) Sampling and analysis methodology. All water quality analyses performed to meet the requirements of this Section shall be conducted according to the methodology in the 15th addition of "Standard Methods for the Examination of Water and Wastewater," which is incorporated by reference, or the methodology in 40 CFR Parts 136 and 434. Water quality sampling performed to meet the requirements of this Section shall be conducted according to either methodology listed above when feasible. "Standard Methods for the Examination of Water and Wastewater ," is a joint publication of the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation and is available from the American Public Health Association, 1015 15th Street, NW, Washington, DC 20036. This document is also available for inspection at the Office of the Federal Register Information Center, Room 8301, 1100 Street, NW, Washington, DC; at the Office of the OSM Administrative Record, U.S. Department of the Interior, Room 5315, 1100 Street, NW, Washington, DC; at the OSM Eastern Technical Service Center, U.S. Department of the Interior, Building 10, Parkway Center, Pittsburgh, PA; and at the OSM Western Technical Service Center, U.S. Department of the Interior, Brooks Tower, 1020 15th Street, Denver, CO. This incorporation by reference was approved by the Director of the Federal Register on October 26, 1983. This document is incorporated as it exists on the date of the approval, and a notice of any changes in it will be published in the Federal Register.
- (b) Baseline information. The application shall include the following baseline hydrologic information, and any additional information required by the Division.
- (1) Groundwater information. The location and ownership for the permit and adjacent areas of existing wells, springs, and other groundwater resources, seasonal quality and quantity of groundwater, and usage. Water quality descriptions shall include, at a minimum, total dissolved solids or specific conductance corrected to 25 degrees C., pH, total iron, and total manganese. Groundwater quantity descriptions shall include, at a minimum approximate rates of discharge or usage and depth to the water in the coal seam, and each water-bearing stratum above and potentially impacted stratum below the coal seam.
- (2) Surface-water information. The name, location, ownership, and description of all surface-water bodies such as streams, lakes, and impoundments, the location of

any discharge into any surface-water body in the proposed permit and adjacent areas, and information on surface-water quality and quantity sufficient to demonstrate seasonal variation and water usage. Water quality descriptions shall include, at a minimum, baseline information on total suspended solids, total dissolved solids or specific conductance corrected to 25 degrees C., pH, total iron, and total manganese. Baseline acidity and alkalinity information shall be provided if there is a potential for acid drainage from the proposed mining operation. Water quantity descriptions shall include, at a minimum, baseline information on seasonal flow rates.

- (3) Supplemental information. If the determination of the probable hydrologic consequences (PHC) required by paragraph (1) of this Section indicates that adverse impacts on or off the proposed permit area may occur to the hydrologic balance or that acid-forming or toxic-forming material is present that may result in the contamination of groundwater or surface water supplies, then information supplemental to that required under paragraphs (b)(1) and (2) of this Section shall be provided to evaluate such probable hydrologic consequences and to plan remedial and reclamation activities. Such supplemental information may be based upon drilling, aquifer tests, hydrogeologic analysis of the water-bearing strata, flood flows, or analysis of other water quality or quantity characteristics.

(c) Baseline cumulative impact area information.

- (1) Hydrologic and geologic information for the cumulative impact area necessary to assess the probable cumulative hydrologic impacts of the proposed operation and anticipate mining on surface and groundwater systems as required by paragraph (g) of this Section shall be provided to the Division if available from appropriate Federal or State agencies.
- (2) If the information is not available from such agencies, then the applicant may gather and submit this information to the Division as part of the permit application.
- (3) The permit shall not be approved until the necessary hydrologic and geologic information is available to the Division.

(d) Modeling. The use of modeling techniques, interpretation or statistical techniques may be included as part of the permit application, but actual surface and groundwater information may be required by the Division for each site even when such techniques are used.

(e) Alternative water source information. If the PHC determination required by paragraph (f) of this Section indicates that the proposed mining operation may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural,

industrial or other legitimate purpose, then the application shall contain information on water availability and alternative water sources, including the suitability of alternative water sources for existing premining uses and approved postmining land uses.

(f) Probable hydrologic consequences determination.

- (1) The application shall contain a determination of the probable hydrologic consequences (PHC) of the proposed operation upon the quality and quantity of surface and groundwater under seasonal flow conditions for the proposed permit and adjacent areas. The PHC determination must address all proposed mining activities associated with the permit area for which authorization is sought, not only those expected to occur during the term of the permit.
- (2) The PHC determination shall be based on baseline hydrologic, geologic and other information collected for the permit application and may include data statistically representative of the site.
- (3) The PHC determination shall include findings on
 - (i) Whether adverse impacts may occur to the hydrologic balance;
 - (ii) Whether acid-forming or toxic-forming materials are present that could result in the contamination of surface or groundwater supplies;
 - (iii) Whether the proposed operation may proximately result in contamination, diminution or interruption of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial, or other legitimate purpose; and
 - (iv) What impact the proposed operation will have on
 - (A) Sediment yield from the disturbed area;
 - (B) Acidity, total suspended and dissolved solids, and other important water quality parameters of local impacts;
 - (C) Flooding or streamflow alterations;
 - (D) Groundwater and surface water availability; and
 - (E) Other characteristics as required by the Division.

- (v) For underground mining activities conducted after October 24, 1992, whether the underground mining activities may result in contamination, diminution or interruption of a well or spring in existence at the time the permit application is submitted and used for domestic, drinking, or residential purposes within the permit or adjacent areas.
 - (4) An application for a permit revision shall be reviewed by the Division to determine whether a new or updated PHC determination shall be required.
- (g) Cumulative hydrologic impact assessment.
- (1) The Division shall provide an assessment of the probable cumulative hydrologic impacts (CHIA) of the proposed operation and all anticipated mining upon surface and groundwater systems in the cumulative impact area. The CHIA shall be sufficient to determine, for purposes of permit approval, whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area. The Division may allow the applicant to submit data and analyses relevant to the CHIA with the permit application.
 - (2) An application for a permit revision shall be reviewed by the Division to determine whether a new or updated CHIA shall be required.
- (h) Hydrologic reclamation plan. The application shall include a plan, with maps and descriptions, indicating how the relevant requirements of Part 816, including 816.41 to 816.43, will be met. The plan shall be specific to the local hydrologic conditions. It shall contain the steps to be taken during mining and reclamation through bond release to minimize disturbances to the hydrologic balance within the permit and adjacent areas; to prevent material damage outside the permit area; to meet applicable Federal and State water quality laws and regulations; and to protect the rights of present water users. The plan shall include the measures to be taken to: avoid acid or toxic drainage; prevent, to the extent possible, using the best technology currently available, additional contributions of suspended solids to streamflow; provide water-treatment facilities when needed; control drainage; restore approximate premining recharge capacity and protect or replace rights of present water users. The plan shall specifically address any potential adverse hydrologic consequences identified in the PHC determination prepared under paragraph (f) of this Section and shall include preventive and remedial measures.

(i) Groundwater monitoring plan.

- (1) The application shall include a groundwater monitoring plan based upon the PHC determination required under paragraph (f) of this section and the analysis of all baseline hydrologic, geologic and other information in the permit application. The plan shall provide for the monitoring of parameters that relate to the suitability of the groundwater for current and approved postmining land uses and to the objectives for protection of the hydrologic balance set forth in paragraph (h) of this Section. It shall identify the quantity and quality parameters to be monitored, sampling frequency, and site locations. It shall describe how the data may be used to determine the impacts of the operation upon the hydrologic balance. At a minimum, total dissolved solids or specific conductance corrected to 25 degrees C., pH, total iron, total manganese, and water levels shall be monitored and data submitted to the regulatory authority at least every three months for each monitoring location. The Division may require additional monitoring.
- (2) If an applicant can demonstrate by the use of the PHC determination and other available information that a particular water-bearing stratum in the proposed permit and adjacent area is not one which serves as an aquifer which significantly ensures the hydrologic balance within the cumulative impact area, then monitoring of that stratum may be waived by the Division.

(j) Surface water monitoring plan.

- (1) The application shall include a surface water monitoring plan based upon the PHC determination required under paragraph (f) of this Section and the analysis of all baseline hydrologic, geologic, and other information in the permit application. The plan shall provide for the monitoring of parameters that relate to the suitability of the surface water for current and approved postmined land uses and to the objectives for protection of the hydrologic balance as set forth in paragraph (h) of this Section as well as the effluent limitations found at 40 CFR Part 434.
- (2) The plan shall identify the surface water quantity and quality parameters to be monitored, sampled, frequency and site locations. It shall describe how the data may be used to determine the impacts of the operations upon the hydrologic balance.
 - (i) At all monitoring locations in the surface water bodies such as streams, lakes, and impoundments, that are potentially impacted or into which water will be discharged and at upstream monitoring locations the total dissolved solids or specific conductance corrected to 25 degrees C., total suspended solids, pH, total iron, total manganese, and flow shall be monitored.

- (ii) For point-source discharges, monitoring shall be conducted in accordance with 40 CFR Parts 122, 123 and 434 and as required by the National Pollutant Discharge Elimination System permitting authority.
- (3) The monitoring reports shall be submitted to the regulatory authority every three (3) months. The Division may require additional monitoring.

SECTION 780.23

RECLAMATION PLAN: POSTMINING LAND USES

12-05-97

- (a) The plan shall contain a statement of the condition, capability, and productivity of the land within the proposed permit area, including:
 - (1) A map and supporting narrative of the uses of the land existing at the time of the filing of the application. If the premining use of the land was changed within 5 years before the anticipated date of beginning the proposed operations, the historic use of the land shall also be described. In the case of previously mined land, the use of the land prior to any mining shall also be described to the extent such information is available.
 - (2) A narrative of land capability and productivity, which analyzes the land-use description under paragraph (a) of this section in conjunction with other environmental resources information. The narrative shall provide analyses of:
 - (i) The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover, and the hydrology of the proposed permit area; and
 - (ii) The productivity of the proposed permit area before mining, expressed as average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, state agricultural universities, or appropriate state natural resource or agricultural agencies.
- (b) Each plan shall contain a detailed description of the proposed use, following reclamation, of the land within the proposed permit area, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use of existing land use policies and plans. The description shall explain:
 - (1) How the proposed postmining land use is to be achieved and the necessary

support activities which may be needed to achieve the proposed land use; and

- (2) Where a land use different from the premining land use is proposed, all materials needed for approval of the alternative use under Section 816.133.
 - (3) The consideration which has been given to making all of the proposed surface mining activities consistent with surface owner plans and applicable state and local land use plans and programs.
- (c) The description shall be accompanied by a copy of the comments concerning the proposed use by the legal or equitable owner of record of the surface of the proposed permit area and the state and local government agencies which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

SECTION 780.25

RECLAMATION PLAN: SILTATION STRUCTURES, IMPOUNDMENTS, BANKS, DAMS AND EMBANKMENTS

5-27-99

- (a) General. Each application shall include a general plan and a detailed design plan for each proposed siltation structure, water impoundment, and coal processing waste bank, dam, or embankment within the proposed permit area.
- (1) Each general plan shall-
 - (i) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer, or by a professional geologist with assistance from experts in related fields such as land surveying and landscape architecture;
 - (ii) Contain a description, map and cross section of the structure and its location;
 - (iii) Contain preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure;
 - (iv) Contain a survey describing the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred; and
 - (v) Contain a certification statement which includes a schedule setting forth the dates that any detailed design plans for structures that are not submitted with the general plan will be submitted to the Director. The

Director shall have approved, in writing, the detailed design plan for a structure before construction of the structure begins.

- (2) Impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210-VI-TR60, Oct. 1985), "Earth Dams and Reservoirs," Technical Release No. 60 (TR-60) shall comply with the requirements of this section for structures that meet or exceed the size or other criteria of the Mine Safety and Health Administration (MSHA). The technical release is hereby incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the National Technical Information Services (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, order No. PB 87-157509/AS. Copies can be inspected at the OSM Headquarters Office, Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 660, 800 North Capitol Street, Washington, DC or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Each detailed design plan for a structure that meets or exceeds the size or other criteria of MSHA, 30 CFR 77.216(a) shall:
- (i) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer with assistance from experts in related fields such as geology, land surveying, and landscape architecture;
 - (ii) Include any geotechnical investigation, design, and construction requirements for the structure;
 - (iii) Describe the operation and maintenance requirements for each structure; and
 - (iv) Describe the timetable and plans to remove each structure, if appropriate;
- (3) Each detailed design plan for a structure not included in paragraph (a)(2) of this section shall:
- (i) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer;
 - (ii) Include any design and construction requirements for the structure, including any required geotechnical information;
 - (iii) Describe the operation and maintenance requirements for each structure; and

- (iv) Describe the timetable and plans to remove each structure, if appropriate.
- (b) Siltation structures. Siltation structures shall be designed in compliance with the requirements of Section 816.46.
- (c) Permanent and temporary impoundments.
 - (1) Permanent and temporary impoundments shall be designed to comply with the requirements of Section 816.49 of this Chapter.
 - (2) Each plan for an impoundment meeting the size or other criteria of the Mine Safety and Health Administration shall comply with the requirements of 30CFR Sections 77.216-1 and 77.216-2. The plan required to be submitted to the District Manager of MSHA under 30 CFR Section 77.216 shall be submitted to the Division as part of the permit application in accordance with paragraph (a) of this section.
 - (3) For impoundments not included in paragraph (a)(2) of this section, the Division may approve engineering design standards that ensure stability comparable to a 1.3 minimum static safety factor in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 specified in Section 816.49(a)(4)(ii) of this Chapter.
- (d) Coal processing waste banks. Coal processing waste banks shall be designed to comply with the requirements of Sections 816.81 through 816.84.
- (e) Coal processing waste dams and embankments. Coal processing waste dams and embankments shall be designed to comply with the requirements of Sections 816.81-816.84. Each plan shall comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:
 - (1) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, the subsurface conditions.
 - (2) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam,

embankment, or reservoir site shall be considered.

- (3) All springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.
- (4) Consideration shall be given to the possibility of mudflows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.
- (f) If the structure meets the Class B or C criteria for dams in TR-60 or meets the size or other criteria of 30 CFR Section 77.216(a), each plan under paragraph (b), (c), and (e) of this section shall include a stability analysis of the structure. The stability analysis shall include, but not be limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

SECTION 780.27 RECLAMATION PLAN: SURFACE MINING NEAR
UNDERGROUND MINING

5-29-80

For a surface mining activities to be conducted within 500 feet of an underground mine, the application shall describe the measures to be used to comply with Section 816.79.

SECTION 780.29 DIVERSIONS

5-29-80

Each application shall contain descriptions, including maps and cross sections, of stream channel diversions and other diversions to be constructed within the proposed permit area in compliance with the performance standards of Sections 816.43 through 816.44.

SECTION 780.31 PROTECTION OF PUBLIC PARKS AND HISTORIC PLACES

8-23-02

- (a) For any publicly owned parks or any places listed on the National Register of Historic Places that may be adversely affected by the proposed operation, each plan shall describe the measures to be used:
 - (1) To prevent adverse impacts, or

- (2) If valid existing rights exists, as determined under Section 761.16 of this chapter, or joint agency approval is to be obtained under Section 761.17(d) of this Chapter, to minimize adverse impacts.
- (b) The Division may require the applicant to protect historic or archeological properties listed on or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. Appropriate mitigation and treatment measures may be required to be taken after permit issuance provided that the required measures are completed before the properties are affected by any mining operation.

SECTION 780.33 RELOCATION OR USE OF PUBLIC ROADS

8-23-02

Each plan shall describe, with appropriate maps and cross section drawings, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under Section 761.14, the applicant seeks to have the Division's approval of

- (a) Conducting the proposed operations within 100 feet of the right-of-way line of any public road, except where mine access or haul-roads join such right-of-way; or,
- (b) Relocating the public road.

SECTION 780.35 DISPOSAL OF EXCESS SPOIL

5-27-99

- (a) Each plan shall contain descriptions, including appropriate maps and cross section drawings of the proposed disposal site and design of the spoil disposal structures according to Sections 816.71 through 816.74. These plans shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal, if appropriate of the site and structures.
- (b) Except for the disposal of excess spoil on pre-existing benches, each application shall contain the results of a geotechnical investigation of the proposed disposal site, including the following
 - (1) The character of bedrock and any adverse geologic conditions in the disposal area;
 - (2) A survey identifying all springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the disposal site;

- (3) A survey of the potential effects of subsidence of the subsurface strata due to past and future mining operations;
 - (4) A technical description of the rock materials to be utilized in the construction of those disposal structures containing rock chimney cores or underlain by a rock drainage blanket; and
 - (5) A stability analysis including, but not limited to, strength parameters, pore pressures and long-term seepage conditions. These data shall be accompanied by a description of all engineering design assumptions and calculations and the alternatives considering selecting the specific design specifications and methods.
- (c) If under Section 816.71(i) rocktoe buttresses or key-way cuts are required the application shall include the following
- (1) The number, location, and depth of borings or test pits which shall be determined with respect to the size of the spoil disposal structure and subsurface conditions; and in accordance with paragraph (b)(5) of this Section.
 - (2) Engineering specifications utilized to design the rock-toe buttress-way cuts which shall be determined in accordance with paragraph (b)(5) of this Section.

SECTION 780.37 ROAD SYSTEMS

8-23-02

- (a) Plans and drawings. Each applicant for a surface coal mining and reclamation permit shall submit plans and drawings for each road, as defined in Section 701.5 of this chapter, to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall –
- (1) Include a map, appropriate cross sections, design drawings and specifications for road widths, gradients, surfacing materials, cuts, fill embankments, culverts, bridges, drainage ditches, low-water crossings, and drainage structures;
 - (2) Contain the drawings and specifications of each proposed road that is located in the channel of an intermittent or perennial stream, as necessary for approval of the road by the Director in accordance with Section 816.150(d)(1) of this chapter;
 - (3) Contain the drawings and specifications for each proposed ford of perennial or intermittent streams that is used as a temporary route, as necessary for approval of the ford by the Director in accordance with Section 816.151(b)(2) of this chapter;

- (4) Contain a description of measures to be taken to obtain approval of the Director for alteration or relocation of a natural stream channel under Section 816.151(c)(5) of this chapter;
 - (5) Contain the drawings and specifications for each low-water crossing of perennial or intermittent stream channels so that the Director can maximize the protection of the stream in accordance with Section 816.151(c)(6) of this chapter; and
 - (6) Describe the plans to remove and reclaim each road that would not be retained under an approved postmining land use, and the schedule for this removal and reclamation.
- (b) Primary road certification. The plans and drawings for each primary road shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer with experience in the design and construction of roads, as meeting the requirements of this chapter; current, prudent engineering practices; and any design criteria established by the Director.

SECTION 780.38

SUPPORT FACILITIES

10-29-92

Each applicant for a surface coal mining and reclamation permit shall submit a description, plans, and drawings for each support facility to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall include a map, appropriate cross sections, design drawings, and specifications sufficient to demonstrate compliance with Section 816.181 of this Chapter for each facility.

**PART 782 -- UNDERGROUND MINING PERMIT APPLICATIONS – MINIMUM
REQUIREMENTS FOR LEGAL, FINANCIAL, COMPLIANCE, AND RELATED
INFORMATION**

SECTION

782.1	Scope
782.2	Objectives
782.4	Responsibilities
782.11	Applicability
782.13	Identification of Interests
782.14	Compliance Information
782.15	Right of Entry and Operation Information
782.16	Relationship to Areas Designated Unsuitable For Mining
782.17	Permit Term Information
782.18	Personal Injury and Property Damage Insurance Information
782.19	Identification of Other Licenses and Permits
782.20	Identification of Location of Public Office for Filing of Application
782.21	Newspaper Advertisement and Proof of Publication

SECTION 782.1 SCOPE

5-29-80

This part establishes the requirements for the legal, financial, compliance and general information that must be contained in permit applications for underground mining activities.

SECTION 782.2 OBJECTIVES

5-29-80

The objective of this Part is to ensure that all relevant information on the ownership and control of persons who conduct underground mining activities, the ownership and control of the property to be affected by the operations, the compliance status and history of those persons, and other important information is provided in the application to the Division.

SECTION 782.4 RESPONSIBILITIES

5-29-80

It is the responsibility of the permit applicant to provide to the Division all of the information required by this Part.

SECTION 782.11

APPLICABILITY

5-29-80

This Part applies to any person who applies for a permit to conduct underground mining activities. Where a reference is given to another Section in lieu of providing a rule, i.e., Section 782.13 Identification of Interests. See Section 778.13. The reader is referred to the equivalent surface mining rule which should be followed as if it were reproduced in full and requested information with respect to underground mining.

SECTION 782.13

IDENTIFICATION OF INTERESTS

5-29-80

SEE SECTION 778.13

SECTION 782.14

COMPLIANCE INFORMATION

5-29-80

SEE SECTION 778.14

SECTION 782.15

RIGHT OF ENTRY AND OPERATION INFORMATION

5-29-80

- (a) Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin underground mining activities in the permit area and whether that right is the subject of pending litigation. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.
- (b) For underground mining activities where the associated surface operations involve the surface mining of coal and the private mineral estate to be mined has been severed from the private surface estate, the application shall also provide, for lands to be affected by those operations within the permit area
 - (1) A copy of the written consent of the surface owner to the extraction of coal by surface mining methods; or
 - (2) A copy of the document of conveyance that expressly grants or reserves the right to extract the coal by surface mining methods; or

- (3) If the conveyance does not expressly grant the right to extract coal by surface mining methods, documentation that under Arkansas law, the applicant has the legal authority to extract the coal by those methods.
- (c) Nothing in this Section shall be construed to afford the Division the authority to adjudicate property title disputes.

SECTION 782.16 RELATIONSHIP TO AREAS DESIGNATED UNSUITABLE
FOR MINING

5-29-80

SEE SECTION 778.16

SECTION 782.17 PERMIT TERM INFORMATION

5-29-80

- (a) Each application shall state the anticipated or actual starting and termination date of each phase of the underground mining activities and the anticipated number of acres of surface lands to be affected, and the horizontal and vertical extent of proposed underground mine workings, for each phase of mining and over the total life of the permit.
- (b) If the applicant proposes to conduct the underground mining activities in excess of five (5) years, the application shall contain the information needed for the showing required under Section 786.25(a).

SECTION 782.18 PERSONAL INJURY AND PROPERTY DAMAGE
INSURANCE INFORMATION

5-29-80

SEE SECTION 778.18

SECTION 782.19 IDENTIFICATION OF OTHER LICENSES AND PERMITS

5-29-80

SEE SECTION 778.19

SECTION 782.20 IDENTIFICATION OF LOCATION OF PUBLIC OFFICE FOR
FILING OF APPLICATION
5-29-80

SEE SECTION 778.20

SECTION 782.21 NEWSPAPER ADVERTISEMENT AND PROOF OF
PUBLICATION
5-29-80

SEE SECTION 778.21

PART 783 -- UNDERGROUND MINING PERMIT APPLICATIONS -- MINIMUM
REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES

SECTION

783.1	Scope
783.2	Objectives
783.4	Responsibilities
783.11	General Requirements
783.12	General Environmental Resources Information
783.14	Geology Description
783.18	Climatological Information
783.19	Vegetation Information
783.21	Soil Resources Information
783.24	Maps: General Requirements
783.25	Cross Sections, Maps, and Plans
783.27	Prime Farmland Investigation

SECTION 783.1	SCOPE	5-29-80
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SEE SECTION 779.1

SECTION 783.2	OBJECTIVES	5-29-80
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SEE SECTION 779.2

SECTION 783.4	RESPONSIBILITIES	5-29-80
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SEE SECTION 779.4

SECTION 783.11	GENERAL REQUIREMENTS	5-29-80
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SEE SECTION 779.11

SECTION 783.12	GENERAL ENVIRONMENTAL INFORMATION	RESOURCES
		5-29-80

SEE SECTION 779.12

SECTION 783.14	GEOLOGY DESCRIPTION	10-29-92
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- (a) General. Each application shall include geologic information in sufficient detail to assist in--
 - (1) Determining the probable hydrologic consequences of the operation upon the quality and quantity of surface and ground water in the permit and adjacent areas, including the extent to which surface- and ground-water monitoring is necessary;
 - (2) Determining all potentially acid- or toxic-forming strata down to and including the stratum immediately below the coal seam to be mined;
 - (3) Determining whether reclamation required by this Chapter can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area; and
 - (4) Preparing the subsidence control plan under Section 784.20.
- (b) Geologic information shall include, at a minimum, the following:
 - (1) A description of the geology of the proposed permit and adjacent areas down to and including the deeper of either the stratum below the lowest coal seam to be mined or any aquifer below the lowest coal seam to be mined which may be adversely impacted by mining. This description shall include the areal and structural geology of the permit and adjacent areas, and any other parameters which influence the required reclamation and it shall also show how the areal and structural geology may affect the occurrence, availability, movement, quality and quantity of potentially impacted surface and ground water. It shall be based on –
 - (i) The cross sections, maps, and plans required by Section 783.25 of this Chapter;
 - (ii) The information obtained under paragraphs (b)(2), (b)(3), and (c) of this Section; and
 - (iii) Geologic literature and practices.

- (2) For any portion of a permit area in which the strata down to the coal seam to be mined will be removed or are already exposed, samples shall be collected and analyzed from test boring; drill cores; or fresh, unweathered, uncontaminated samples from rock outcrops down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest coal seam to be mined which may be adversely impacted by mining. The analyses shall result in the following:
 - (i) Logs showing the lithologic characteristics including physical properties and thickness of each stratum and location of ground water where occurring;
 - (ii) Chemical analyses identifying those strata that may contain acid- or toxic-forming, or alkalinity-producing materials and to determine their content except that the Director may find that the analysis for alkalinity-producing material is unnecessary; and
 - (iii) Chemical analysis of the coal seam for acid- or toxic-forming materials, including the total sulfur and pyritic sulfur, except that the Director may find that the analysis of pyritic sulfur content is unnecessary.
- (3) For lands within the permit and adjacent areas where the strata above the coal seam to be mined will not be removed, samples shall be collected and analyzed from test borings or drill cores to provide the following data:
 - (i) Logs of drill holes showing the lithologic characteristics, including physical properties and thickness of each stratum that may be impacted, and location of ground water where occurring;
 - (ii) Chemical analyses for acid- or toxic-forming or alkalinity-producing materials and their content in the strata immediately above and below the coal seam to be mined;
 - (iii) Chemical analyses of the coal seam for acid- or toxic-forming materials, including the total sulfur and pyritic sulfur, except that the Director may find that the analysis of pyritic sulfur content is unnecessary; and
 - (iv) For standard room and pillar mining operations, the thickness and engineering properties of clays or soft rock such as clay shale, if any, in the stratum immediately above and below each coal seam to be mined.
- (c) If determined to be necessary to protect the hydrologic balance, to minimize or prevent subsidence, or to meet the performance standards of this Chapter, the Director may require

the collection, analysis, and description of geologic information in addition to that required by paragraph (b) of this Section.

- (d) An applicant may request the Director to waive in whole or in part the requirements of paragraphs (b)(2) and (b)(3) of this Section. The waiver may be granted only if the Director finds in writing that the collection and analysis of such data is unnecessary because other information having equal value or effect is available to the Division in a satisfactory form.

SECTION 783.18	CLIMATOLOGICAL INFORMATION	5-29-80
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SEE SECTION 779.18

SECTION 783.19	VEGETATION INFORMATION	5-29-80
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SEE SECTION 779.19

SECTION 783.21	SOIL RESOURCES INFORMATION	5-29-80
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SEE SECTION 779.21

SECTION 783.24	MAPS: GENERAL REQUIREMENTS	5-29-80
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SEE SECTION 779.24

SECTION 783.25	CROSS SECTIONS, MAPS, AND PLANS	5-29-80
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SEE SECTION 779.25

SECTION 783.27	PRIME FARMLAND INVESTIGATION	5-29-80
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SEE SECTION 779.27

**PART 784 -- UNDERGROUND MINING PERMIT APPLICATIONS – MINIMUM
REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN**

SECTION

784.1	Scope
784.2	Objectives
784.4	Responsibilities
784.11	Operation Plan: General Requirements
784.12	Operation Plan: Existing Structures
784.13	Reclamation Plan: General Requirements
784.14	Reclamation Plan: Hydrologic Information
784.15	Reclamation Plan: Postmining Land Uses
784.16	Reclamation Plan: Siltation Structures, Impoundments, Banks, Dams and Embankments
784.17	Protection of Public Parks and Historic Places
784.18	Relocation or Use of Public Roads
784.19	Underground Development Waste
784.20	Subsidence Control Plan
784.21	Fish and Wildlife Information
784.22	Diversions
784.23	Operation Plan: Maps and Plans
784.24	Transportation Facilities
784.25	Return of Coal Processing Waste to Abandoned Underground Workings
784.26	Air Pollution Control Plan
784.27	Support Facilities

SECTION 784.1	SCOPE	5-29-80
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SEE SECTION 780.1

SECTION 784.2	OBJECTIVES	5-29-80
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SEE SECTION 780.2

SECTION 784.4	RESPONSIBILITIES	5-29-80
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SEE SECTION 780.4

SECTION 784.11 OPERATION PLAN: GENERAL REQUIREMENTS
5-29-80

SEE SECTION 780.11

SECTION 784.12 OPERATION PLAN: EXISTING STRUCTURES
5-29-80

SEE SECTION 780.12

SECTION 784.13 RECLAMATION PLAN: GENERAL REQUIREMENTS
5-29-80

SEE SECTION 780.18; provided that the reclamation plan shall also include all information required by Sections 784.19, 784.20 and 784.25.

SECTION 784.14 RECLAMATION PLAN: HYDROLOGIC INFORMATION
12-05-97

SEE SECTION 780.21; provided that Sections 780.21(e) and 780.21(f)(3)(iii) are not applicable to underground mining operations and provided that the reclamation plan shall include a description of the measures to be taken to insure the protection of water quality by locating opening for mines in accordance with Section 816.50-U. Provided further that Section 780.21(f)(3)(v) shall apply to underground mining operations:

SECTION 784.15 RECLAMATION PLAN: POSTMING LAND USES
12-05-97

SEE SECTION 780.23

SECTION 784.16 RECLAMATION PLAN: SILTATION STRUCTURES,
IMPOUNDMENTS, BANKS, DAMS, AND EMBANKMENTS
12-05-97

SEE SECTION 780.25

SECTION 784.17 PROTECTION OF PUBLIC PARKS AND HISTORIC PLACES
5-29-80

SEE SECTION 780.31

SECTION 784.18 RELOCATION OR USE OF PUBLIC ROADS
5-29-80

SEE SECTION 780.33

SECTION 784.19 UNDERGROUND DEVELOPMENT WASTE
5-29-80

Each plan shall contain descriptions, including appropriate maps and cross-section drawings of the proposed disposal methods and sites for placing underground development waste and excess spoil generated at surface areas affected by surface operations and facilities, according to Sections 816.71-816.74. Each plan shall describe the geotechnical investigation, design, construction, operation, maintenance and removal, if appropriate, of the structures and prepared according to Section 780.35.

SECTION 784.20 SUBSIDENCE CONTROL PLAN
12-05-97

- (a) Pre-subsidence survey. Each application must include:
- (1) A map of the permit and adjacent areas at a scale of 1:12,000 or larger if determined necessary by the Division, showing the location and type of structures and renewable resource lands that subsidence may materially damage or for which the value or reasonably foreseeable use may be diminished by subsidence, and showing the location and type of drinking, domestic and residential water supplies that could be contaminated, diminished, or interrupted by subsidence.
 - (2) A narrative indicating whether subsidence, if it occurred, could cause material damage to or diminish the value or reasonably foreseeable use of such structures or renewable resource lands or could contaminate, diminish, or interrupt drinking, domestic, or residential water supplies.
 - (3) A survey of the condition of all non-commercial buildings or occupied residential dwellings and structures related thereto, that may be materially damaged or for which the reasonably foreseeable use may be diminished by subsidence, within the area encompassed by the applicable angle of draw; as well as a survey of the

quantity and quality of all drinking, domestic, and residential water supplies within the permit area and adjacent area that could be contaminated, diminished, or interrupted by subsidence. If the applicant cannot make this survey because the owner will not allow access to the site, the applicant will notify the owner, in writing, of the effect that denial of access will have as described in Section 816.121-U(c)(4) of this Chapter. The applicant must pay for any technical assessment or engineering evaluation used to determine the pre-mining condition or value of such non-commercial buildings or occupied residential dwellings and structures related thereto and the quantity and quality of drinking, domestic, or residential water supplies. The applicant must provide copies of the survey and any technical assessment or engineering evaluation to the property owner and the Director.

- (b) Subsidence control plan. If the survey conducted under paragraph (a) of this section shows that no structures, or drinking, domestic, or residential water supplies, or renewable resource lands exist, or that no material damage or diminution in value or reasonable foreseeable use of such structures or lands, and no contamination, diminution, or interruption of such water supplies would occur as a result of mine subsidence, and if the Director agrees with this conclusion, no further information need be provided under this section. If the survey shows that structures, renewable resource lands, or water supplies exist and that subsidence could cause material damage or diminution in value or reasonably foreseeable use, or contamination, diminution, or interruption of protected water supplies, or if the Director determines that damage, diminution in value or foreseeable use, or contamination, diminution, or interruption could occur, the application must include a subsidence control plan that contains the following information:
- (1) A description of the method of coal removal, such as longwall mining, room-and-pillar removal or hydraulic mining, including the size, sequence and timing of the development of underground workings;
 - (2) A map of the underground workings that describes the location and extent of the areas in which planned-subsidence mining methods will be used and that identifies all areas where the measures described in paragraphs (b)(4), (b)(5), and (b)(7) of this section will be taken to prevent or minimize subsidence and subsidence-related damage; and when applicable, to correct subsidence-related material damage;
 - (3) A description of the physical conditions, such as depth of cover, seam thickness and lithology of overlaying strata, that affect the likelihood or extent of subsidence and subsidence-related damage;

- (4) A description of the monitoring, if any, needed to determine the commencement and degree of subsidence so that, when appropriate, other measures can be taken to prevent, reduce or correct material damage in accordance with Section 816.121-U(c) of this Chapter;
- (5) Except for those areas where planned subsidence is projected to be used, a detailed description of the subsidence control measures that will be taken to prevent or minimize subsidence and subsidence-related damage, such as, but not limited to:
 - (i) Backstowing or backfilling of voids;
 - (ii) Leaving support pillars of coal;
 - (iii) Leaving areas in which no coal is removed, including a description of the overlying area to be protected by leaving coal in place; and
 - (iv) Taking measures on the surface to prevent or minimize material damage or diminution in value of the surface;
- (6) A description of the anticipated effects of planned subsidence, if any;
- (7) For those areas where planned subsidence is projected to be used, a description of methods to be employed to minimize damage from planned subsidence to non-commercial buildings and occupied residential dwellings and structures related thereto; or the written consent of the owner of the structure or facility that minimization measures not be taken; or, unless the anticipated damage would constitute a threat to health or safety, a demonstration that the costs of minimizing damage exceed the anticipated costs of repair;
- (8) A description of the measures to be taken in accordance with Sections 816.41(e) and 816.121-U(c) of this Chapter to replace adversely affected protected water supplies or to mitigate or remedy any subsidence-related material damage to the land and protected structures; and
- (9) Other information specified by the Director as necessary to demonstrate that the operation will be conducted in accordance with Section 816.121-U of this Chapter.

SECTION 784.21

FISH AND WILDLIFE INFORMATION

11-14-89

SEE SECTION 780.16

SECTION 784.22 DIVERSIONS

5-29-80

SEE SECTION 780.29

SECTION 784.23 OPERATION PLAN: MAPS AND PLANS

5-29-80

SEE SECTION 780.14; provided that Section 780.14(b)(7) shall not apply, and in addition to the requirements of Section 780.14, the following shall be shown for the proposed permit area:

- (1) Each profile, at cross-sections specified by the Director of the anticipated final surface configuration to be achieved for the affected areas;
- (2) Location of each water and subsidence monitoring point;
- (3) Location of each facility that will remain on the proposed permit area as a permanent feature, after the completion of underground mining activities.

SECTION 784.24 TRANSPORTATION FACILITIES

5-29-80

SEE SECTION 780.37

SECTION 784.25 RETURN OF COAL PROCESSING WASTE TO ABANDONED
UNDERGROUND WORKINGS

12-05-97

- (a) Each plan shall describe the design, operation and maintenance of any proposed coal processing waste disposal facility, including flow diagrams and any other necessary drawings and maps, for the approval of the Director and the Mine Safety and Health Administration under Section 816.81(f).
- (b) Each plan shall describe the source and quality of waste to be stowed, area to be backfilled, percent of the mine void to be filled, method of constructing underground retaining walls, influence of the backfilling operation on active underground mine operations, surface area to be supported by the backfill, and the anticipated occurrence of surface effects following backfilling.
- (c) The applicant shall describe the source of the hydraulic transport mediums, method of dewatering the placed backfill, retainment of water underground, treatment of water if released to surface streams, and the effect on the hydrologic regime.

- (d) The plan shall describe each permanent monitoring well to be located in the backfilled area, the stratum underlying the mined coal, and gradient from the backfilled area.
- (e) The requirements of Paragraphs (a), (b), (c), and (d) of this Section shall also apply to pneumatic backfilling operations, except where the operations are exempted by the Director from requirements specifying hydrologic monitoring.

SECTION 784.26	AIR POLLUTION CONTROL PLAN	5-29-80
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SEE SECTION 780.15

SECTION 784.27	SUPPORT FACILITIES	10-29-92
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SEE SECTION 780.38

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

SECTION

785.2	Objective
785.13	Experimental Practices Mining
785.14	Mountaintop Removal Mining
785.15	Steep Slope Mining
785.16	Permits Incorporating Variances From Approximate Original Contour Restoration Requirements For Steep Slope Mining
785.17	Prime Farmlands
785.18	Variances for Delay in Contemporaneous Reclamation Requirements In Combined Surface and Underground Mining Operations
785.20	Augering
785.21	Coal Processing Plants or Support Facilities Not Located Within the Permit Area of a Specified Mine
785.22	In Situ Processing Activities
785.25	Lands Eligible for Remining

SECTION 785.2 OBJECTIVE

5-29-80

The objective of this Part is to ensure that permits are issued for certain categories of surface coal mining and reclamation operations only after the Division receives information that shows that these operations will be conducted according to the applicable requirements of the Act, Subchapter K, and the State program.

SECTION 785.13 EXPERIMENTAL PRACTICES MINING

5-01-87

- (a) This Section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations under a permit authorizing the use of alternative mining practices on an experimental basis if the practices require a variance from the environmental protection performance standards of Subchapter K and the State program.
- (b) The purpose of this Section is to provide requirements for the permitting of surface coal mining and reclamation operations that encourage advances in mining and reclamation practices or allow postmining land use for industrial, commercial, residential or public use (including recreational facilities) on an experimental basis.
- (c) Experimental practice, as used in this Section, means the use of alternative surface coal

mining and reclamation operation practices for experimental or research purposes. Experimental practices need not comply with specific environmental protection performance standards of Subchapter K or the State program, if approved pursuant to this Section.

- (d) No person shall engage in or maintain any experimental practice, unless that practice is first approved in a permit by the Director and the OSM Director.
- (e) Each person who desires to conduct an experimental practice shall submit a permit application for the approval of the Director and the OSM Director. The permit application shall contain appropriate descriptions, maps and plans and data which show:
 - (1) The nature of the experimental practice;
 - (2) How use of the experimental practice
 - (i) Encourages advances in mining and reclamation technology, or,
 - (ii) Allows a postmining land use for industrial, commercial, residential, or public use (including recreational facilities), on an experimental basis, when the results are not otherwise attainable under the State Program.
 - (3) That the mining and reclamation operations proposed for using an experimental practice are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practice;
 - (4) That the experimental practice
 - (i) Is potentially more or at least as environmentally protective, during and after the proposed mining and reclamation operations, as those required under Subchapter K of this Chapter and the State Program; and
 - (ii) Will not reduce the protection afforded public health and safety below that provided by the requirements of Subchapter K of this Chapter and the State Program;
 - (5) That the applicant will conduct special monitoring with respect to the experimental practice during and after the operations involved. The monitoring program shall
 - (i) Insure the collection and analysis and reporting of sufficient and reliable data to enable the Director and the OSM Director to make adequate comparisons with other surface coal mining and reclamation operations employing similar experimental practices; and
 - (ii) Include requirements designed to identify, as soon as possible, potential

risks to the environment and public health and safety from the use of the experimental practice.

- (f) Each application shall set forth the environmental protection performance standards of Subchapter K which will be implemented, in the event the objective of the experimental practice is a failure.
- (g) All experimental practices for which variances are sought shall be specifically identified through newspaper advertisements by the applicant and the written notifications by the Director required under Section 786.11.
- (h) No permit authorizing an experimental practice shall be issued, unless the Director first finds, in writing, upon the basis of both a complete application filed in accordance with the requirements of this Section and the comments of the OSM Director, that:
 - (1) The experimental practice meets all of the requirements of paragraphs (e)(2) through (e)(5) of this Section;
 - (2) The experimental practice is based on a clearly defined set of objectives which can reasonably be expected to be achieved;
 - (3) The experimental practice has been specifically approved, in writing, by the OSM Director, based on the OSM Director's findings that all of the requirements of paragraphs (e)(1) through (e)(5) of this Section will be met; and
 - (4) The permit contains conditions which specifically
 - (i) Limit the experimental practice authorized to that granted by the Director and the OSM Director;
 - (ii) Impose enforceable alternative environmental protection requirements; and
 - (iii) Require the person to conduct the periodic monitoring, recording and reporting program set forth in the application, with such additional requirements as the Director or the OSM Director may require.
- (i) Experimental practices granting variances from the special environmental standards of Sections 515 and 516 of the Act applicable to prime farmlands shall be approved only after consultation with the U.S. Department of Agriculture, Natural Resources Conservation Service.
- (j) Each permit which authorizes the use of an experimental practice shall be reviewed in its entirety at least every 2 1/2 years by the Director, or at least once prior to the middle of the permit term. After review, the Director shall, with the consent of the OSM Director, require by order, supported by written findings, any reasonable revision or modification of the

permit provisions necessary to ensure that the operations involved are conducted to protect fully the environment and public health and safety. Any person who is or may be adversely affected by the order shall be provided with an opportunity for a hearing as established in the State program.

- (k) Revisions or modifications to an experimental practice shall be processed in accordance with the requirements of Section 788.12 of this Chapter and approved by the Division. Any revisions which propose significant alterations in the experimental practice shall, at a minimum, be subject to notice, hearing, and public participation requirements of Section 786.12 of this chapter and concurrence by the Director. Revisions that do not propose significant alterations in the experimental practice shall not require concurrence by the Director.

SECTION 785.14

MOUNTAINTOP REMOVAL MINING

5-29-80

- (a) This Section applies to any person who conducts or intends to conduct surface mining activities by mountaintop removal mining.
- (b) Mountaintop removal mining means surface mining activities, where the mining operation removes an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill, except as provided for in Section 824.11(a)(6), by removing substantially all of the overburden off the bench and creating a level plateau or a gently rolling contour, with no highwalls remaining, and capable of supporting postmining land uses in accordance with the requirements of this Section.
- (c) The Director may issue a permit for mountaintop removal mining, without regard to the requirements of Section 816.101-816.105 to restore the lands disturbed by such mining to their approximate original contour, if he first finds, in writing, on the basis of a complete application, that the following requirements are met:
 - (1) The proposed postmining land use of the lands to be affected will be an industrial, commercial, agricultural, residential, or public facility (including recreational facilities) use and, if
 - (i) After consultation with the appropriate land-use planning agencies, if any, the proposed land use is deemed by the Director to constitute an equal or better economic or public use of the affected land compared with the pre-mining use;
 - (ii) The applicant demonstrates compliance with the requirements for acceptable alternative postmining land uses of Section 816.133;

- (iii) The proposed use would be compatible with adjacent land uses and existing State and local land use plans and programs; and
 - (iv) The Director has provided, in writing, an opportunity of not more than sixty (60) days to review and comment on such proposed use to the governing body of general purpose government in whose jurisdiction the land is located and any State or Federal agency which the Director, in its discretion, determines to have an interest in the proposed use.
 - (2) The applicant has demonstrated that, in place of restoration of the land to be affected to the approximate original contour under Section 816.101-816.105, the operation will be conducted in compliance with the requirements of Part 824.
 - (3) The requirements of Part 824 are made a specific condition of the permit.
 - (4) All other requirements of the Act, this Chapter, and the State program are met by the proposed operations.
 - (5) The permit is clearly identified as being for mountaintop removal mining.
- (d)
- (1) Any permits incorporating a variance issued under this Section shall be reviewed by the Director to evaluate the progress and development of mining activities to establish that the operator is proceeding in accordance with the terms of the variance
 - (i) Within the sixth month preceding the third year from the date of its issuance;
 - (ii) Before each permit renewal; and
 - (iii) Not later than the mid each permit term.
 - (2) Any review required under Paragraph (d)(1) of this Section need not be held if the permittee has demonstrated and the Director finds, in writing, within three months before the scheduled review, that all operations under the permit are proceeding and will continue to be conducted in accordance with the terms of the permit and requirements of the Act, this Chapter, and the State program.
 - (3) The terms and conditions of a permit for mountaintop removal mining may be modified at any time by the Director, if he determines that more stringent measures are necessary to insure that the operation involved is conducted in compliance with the requirements of the Act, this Chapter, and the State program.

SECTION 785.15

STEEP SLOPE MINING

5-27-99

- (a) This Section applies to any person who conducts or intends to conduct steep slope surface coal mining and reclamation operations, except
 - (1) Where an operator proposes to conduct surface coal mining and reclamation operations on flat or gently rolling terrain, leaving a plain or predominantly flat area, but on which an occasional steep slope is encountered as the mining operation proceeds;
 - (2) Where a person obtains a permit under the provisions of Section 785.14; or
 - (3) To the extent that a obtains a permit incorporating a variance under Section 785.16.
- (b) Any application for a permit for surface coal mining and reclamation operations covered by this Section shall contain sufficient information to establish that the operations will be conducted in accordance with the requirements of Section 816.106.
- (c) No permit shall be issued for any operations covered by this Section, unless the Director finds, in writing, that in addition to meeting all other requirements of this Subchapter, the operation will be conducted in accordance with the requirements of Section 816.106.

SECTION 785.16

PERMITS INCORPORATING VARIANCES FROM
APPROXIMATE ORIGINAL CONTOUR RESTORATION
REQUIREMENTS FOR STEEP SLOPE MINING

5-27-99

- (a) This Section applies to non-mountain top removal, steep slope surface coal mining and reclamation operations under the State program, where the operation is not to be reclaimed to achieve the approximate original contour required by Sections 816.101-816.105, and 816.106.
- (b) The objective of this Section is to allow for a variance from approximate original contour restoration on steep slopes for surface coal mining and reclamation operations to-
 - (1) Improve watershed control of lands within the permit area and on adjacent lands; and
 - (2) Make land within the permit area, after reclamation, suitable for an industrial, commercial, residential, or public use, including recreational facilities.
- (c) The Director may issue a permit for surface mining activities incorporating a variance from the requirement for restoration of the affected lands to their approximate original contour

only if he first finds, in writing, on the basis of a complete application, that all of the following requirements are met;

- (1) The applicant has demonstrated that the purpose of the variance is to make the lands to be affected within the permit area suitable for an industrial, commercial, residential, or public use postmining land use.
 - (2) The proposed use, after consultation with the appropriate land-use planning agencies, if any, constitutes an equal or better economic or public use.
 - (3) The applicant has demonstrated compliance with the requirements for acceptable alternative postmining land uses of Sections 816.133.
 - (4) The applicant has demonstrated that the watershed of lands within the proposed permit area and adjacent areas will be improved by the operations. The watershed will only be deemed improved if-
 - (i) There will be a reduction in the amount of total suspended solids or other pollutants discharged to ground or surface waters from the permit area as compared to such discharges prior to mining, so as to improve public or private uses or the ecology of such waters; or, there will be reduced flood hazards within the watershed containing the permit area by reduction of the peak flow discharges from precipitation events or thaws;
 - (ii) The total volume of flows from the proposed permit area, during every season of the year, will not vary in a way that adversely affects the ecology of any surface water or any existing or planned use of surface or ground water; and
 - (iii) The Director approves the plan.
 - (5) The applicant has demonstrated that the owner of the surface of the lands within the permit area has knowingly requested, in writing, as part of the application, that a variance be granted. The request shall be made separately from any surface owner consent given for the operations under Sections 778.15 or 782.15 and shall show an understanding that the variance could not be granted without the surface owner's request.
 - (6) The applicant has demonstrated that the proposed operations will be conducted in compliance with the requirements of Section 816.106.
 - (7) All other requirements of the Act, this Chapter, and the State program will be met by the proposed operations.
- (d) If a variance is granted under this Section

- (1) The requirements of Section 816.106 shall be made a specific condition of the permit.
 - (2) The permit shall be specifically marked as containing a variance from approximate original contour.
- (e) Any permits incorporating a variance issued under this Section shall be reviewed by the Director to evaluate the progress and development of the mining activities, to establish that the operator is proceeding in accordance with the terms of the variance
 - (1) Within the sixth month preceding the third year from the date of its issuance;
 - (2) Before each permit renewal; and
 - (3) Not later than the middle of each permit term.
- (f) If the permittee demonstrates to the Director at any of the times specified in paragraph (e) of this Section that the operations involved have been and continue to be conducted in compliance with the terms and conditions of the permit, the requirements of the Act, this Chapter and the State program, the review required at that time need not be held.
- (g) The terms and conditions of a permit incorporating a variance under this Section may be modified at any time by the Director, if he determines that more stringent measures are necessary to insure that the operations involved are conducted in compliance with the requirements of the Act, this Chapter and the State program.
- (h) The Director may grant, on a case by case basis, variances from approximate original contour for steep slope surface and mining and reclamation operations if he finds that the applicant has properly demonstrated his ability to carry out the proposed plan and to comply with the requirements of Section 785.16.

SECTION 785.17 PRIME FARMLANDS

5-27-99

- (a) This Section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations on prime farmland historically used for cropland. This Section does not apply to:
 - (1) Lands on which surface coal mining and reclamation operations are conducted pursuant to any permit issued prior to August 3, 1977; or
 - (2) Lands on which surface coal mining and reclamation operations are conducted pursuant to any renewal or revision of a permit issued prior to August 3, 1977; or

- (3) Lands included in any existing surface coal mining operations for which a permit was issued for all or any part thereof prior to August 3, 1977, provided that:
 - (i) Such lands are part of a single continuous surface coal mining operations begun under a permit issued before August 3, 1977; and
 - (ii) The permittee had a legal right to mine the lands prior to August 3, 1977, through ownership, contract, or lease but not including an option to buy, lease, or contract; and
 - (iii) The lands contain part of a continuous recoverable coal seam that was being mined in a single continuous mining pit (or multiple pits if the lands are proven to be part of a single continuous surface coal mining operation) begun under a permit issued prior to August 3, 1977.
- (4) For purposes of this Section:
 - (i) Renewal of a permit means a decision by the Director to extend the time by which the permittee may complete mining within the boundaries of the original permit, and revision of the permit means a decision by the Director to allow changes in the method of mining operations within the original permit area, or the decision of the Director to allow incidental boundary changes to the original permit;
 - (ii) A pit shall be deemed to be a single continuous mining pit even if portions of a pit are crossed by a road, pipeline, railroad, or powerline or similar crossing;
 - (iii) A single continuous surface coal mining operation is presumed to consist only of a single continuous mining pit under a permit issued prior to August 3, 1977, but may include non-continuous parcels if the operator can prove by clear and convincing evidence that, prior to August 3, 1977, the non-continuous parcels were part of a single permitted operation. For the purposes of this Paragraph, clear and convincing evidence includes, but is not limited to, contracts, leases, deeds or other properly executed legal documents (not including options) that specifically treat physically separate parcels as one surface coal mining operation.
- (b) Application contents for prime farmland. If land within the proposed permit area is identified as prime farmland under Section 779.27 or 783.27, the applicant shall submit a plan for the mining and restoration of the land. Each plan shall contain, at a minimum

- (1) A soil survey of the permit area according to the standards of the National Cooperative Soil Survey and in accordance with the procedures set forth in U.S. Department of Agriculture Handbooks 436 (Soil Taxonomy, 1975) and 18 (Soil Survey Manual, 1951).
 - (i) These publications are hereby incorporated by reference as they exist on the date of adoption of this Part. Notices of changes made to these publications will be periodically published by the Division. Agriculture handbooks 436 (Soil Taxonomy) and 18 (Soil Survey Manual) are on file and available for inspection at the Central Office. Copies of these documents are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Stock Number 001-000-02597-0 and Stock Number 10100-0688-6. In addition, these documents are available for inspection at the State and local offices of the Natural Resources Conservation Service, U.S. Department of Agriculture.
 - (ii) The soil survey shall include a description of soil mapping units and a representative soil profile as determined by the Natural Resources Conservation Service, including, but not limited to soil-horizon depths, pH, and the range of soil densities for each prime farmland soil unit within the permit area. Other representative soil-profile descriptions from locality, prepared according to the standards of the National Cooperative Soil Survey, may be used if their use is approved by the State conservationist, Natural Resources Conservation Service. The Director may request the operator to provide information to other physical and chemical soil properties as needed to make a determination that the operator has the technological capability to restore the prime farmland within the permit area to the soil-reconstruction standards of Part 823 of this Chapter.
- (2) The proposed method and type of equipment to be used for removal, storage, and replacement of the soil in accordance with Part 823.
- (3) The moist bulk density of each major horizon of each prime farmland soil in the permit area. The operator shall be required to demonstrate that excessive compaction will be avoided in the replacement of these soils.
- (4) The location of areas to be used for the separate stockpiling of the soil and plans for soil stabilization before redistribution.
- (5) If applicable, documentation, such as agricultural school studies or other scientific data from comparable areas, that supports the use of other suitable material, instead of the A, B or C soil horizon, to obtain on the restored area equivalent or higher levels of yield as non-mined prime farmlands in the surrounding area under

equivalent levels of management.

- (6) Plans for seeding or cropping the final graded disturbed land and the conservation practices to be used to adequately control erosion and sedimentation and restoration of an adequate soil moisture regime, during the period from completion of regrading until release of the performance bond or equivalent guarantee under Subchapter J of this Chapter. Proper adjustments for seasons must be proposed to that final graded land is not exposed to erosion during seasons when vegetation or conservation practices cannot be established due to weather conditions.
 - (7) Available agricultural school studies or other scientific data for areas with comparable soils, climate, and management (including water management) that demonstrate that the proposed method of reclamation will achieve, within a reasonable time, equivalent or higher levels of yield after mining as existed before mining.
 - (8) Current estimated yields under a level of management equivalent to an average level of management used on unmined prime farmlands in the surrounding area for each soil map unit from the USDA for each crop to be used in determining success of revegetation (Section 823.15). These yield estimates shall be used by the Director as the predetermined target level for determining success of revegetation. The target yields may be adjusted by the Director in consultation with the Secretary of Agriculture before approval of the permit application.
 - (9) In all cases, soil productivity for prime farmlands shall be returned to equivalent levels of yield as non-mined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to Section 785.17(b)(1).
- (c) Consultation with Secretary of Agriculture. Before any permit is issued for areas that include prime farmlands, the Director shall consult with the Secretary of Agriculture. The Secretary of Agriculture shall provide for review and comment of the proposed method of soil reconstruction in the plan submitted under paragraph (b) of this Section. If the Secretary considers those methods to be inadequate, he or she shall suggest revisions resulting in more complete and adequate reconstruction. The Secretary of Agriculture has assigned his responsibilities under this Section to the Administrator of the Natural Resources Conservation Service. The Natural Resources Conservation Service shall carry out consultation and review through the State Conservationist located in each State.
- (d) Issuance of permit. A permit for the mining and reclamation of prime farmland may be granted by the Director, if he first finds, in writing, upon the basis of a complete applications, that
- (1) The approved proposed postmining land use of these prime farmlands will be cropland;

- (2) The permit incorporates as specific conditions the contents of the plan submitted under paragraph (b) of this Section, after consideration of any revisions to that plan suggested by the Secretary of Agriculture under paragraph (c) of this Section;
- (3) The applicant has the technological capability to restore the prime farmland, within a reasonable time, to equivalent or higher levels of yield as non-mined prime farmland in the surrounding area under equivalent levels of management; and
- (4) The proposed operations will be conducted in compliance with the requirements of Part 823 and other environmental protection performance and reclamation standards for mining and reclamation of prime farmland of the State program.
- (5) The aggregate total prime farmland acreage shall not be decreased from that which existed prior to mining. Water bodies, if any, to be constructed during mining and reclamation operations must be located within the post-reclamation non-prime farmland portions of the permit area. The creation of any such water bodies must be approved by the Director and the consent of all affected property owners within the permit area must be obtained.

SECTION 785.18 VARIANCES FOR DELAY IN CONTEMPORANEOUS
RECLAMATION REQUIREMENTS IN COMBINED
SURFACE AND UNDERGROUND MINING OPERATIONS
5-29-80

- (a) Scope. This Section applies to any person who conducts or intends to conduct combined surface mining activities and underground mining activities, where contemporaneous reclamation as required by Section is not practicable and a delay is requested to allow underground mining activities to be conducted before the reclamation operation for the surface mining activities can be completed.
- (b) Objective. This Section is to allow for delay in reclamation of surface mining activities, if that delay will allow underground mining activities to be conducted to ensure both maximum practical recovery of coal resources and to avoid multiple future disturbances of surface lands or waters.
- (c) Application contents for variances. Any person who desires to obtain a variance under this Section shall file with the Division complete applications for both the surface mining activities and underground mining activities which are to be combined. The mining and reclamation operation plans for these permits shall contain appropriate narratives, maps and plans, which
 - (1) Show why the proposed underground mining activities are necessary or desirable

- to assure maximum practical recovery of coal;
- (2) Show how multiple future disturbances of surface lands or waters will be avoided;
 - (3) Identify the specific surface areas for which a variance is sought and the particular Sections of the Act, these rules, and the State program from which a variance is being sought;
 - (4) Show how the activities will comply with Part 818 and other applicable requirements of the State program;
 - (5) Show why the variance sought is necessary for the implementation of the proposed underground mining activities;
 - (6) Provide an assessment of the adverse environmental consequences and damages, if any, that will result if the reclamation of surface mining activities is delayed; and,
 - (7) Show how off-site storage of spoil will be conducted to comply with the requirements of the Act, Sections 816.71-816.74, and the State program.
- (d) Issuance of permit. A permit incorporating a variance under this Section may be issued by the Director, if he first finds, in writing on the basis of a complete application filed in accordance with this Section, that
- (1) The applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining activities;
 - (2) The proposed underground mining activities are necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple future disturbances of surface land or waters;
 - (3) The applicant has satisfactorily demonstrated that the applications for the surface mining activities and underground mining activities conform to the requirements of the State program and that all other permits necessary for the underground mining activities have been issued by the appropriate authority;
 - (4) The surface area of surface mining activities proposed for the variance have been shown by the applicant to be necessary for implementing the proposed underground mining activities;
 - (5) No substantial adverse environmental damage, either on- site or off-site, will result from the delay in completion of reclamation otherwise required by the Act, Part 816 of this Chapter, and the State program.
 - (6) The operations will, insofar as a variance is authorized, be conducted in

compliance with the requirements of Part 818 and the State program;

- (7) Provisions for off-site storage of spoil will comply with Section 816.71-816.74 and the State program;
- (8) Liability under the performance bond required to be filed by the applicant with the Director pursuant to Subchapter J, of this Chapter and the State program shall be for the duration of the underground mining activities and until all requirements of Subchapter J and the State program have been complied with; and,
- (9) The permit for the surface mining activities contains specific conditions:
 - (i) Delineating the particular surface areas for which a variance is authorized;
 - (ii) Identifying the particular requirements of Part 818 and the State program which are to be complied with, in lieu of the otherwise applicable provisions of Part 816, and the State program; and
 - (iii) Providing a detailed schedule for compliance with the particular requirements of Part 818 and the State program identified under paragraph (d)(9)(ii) of this Section.
- (e) Review of permits containing variances. variances granted under permits issued under this Section shall be reviewed by the Director no later than 3 years from the dates of issuance of the permit and any permit renewals.

SECTION 785.20 AUGERING

5-29-80

- (a) This Section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations utilizing augering operations.
- (b) Any application for a permit for operations covered by this Section shall contain, in the mining and reclamation plan, a description of the augering methods to be used and the measures to be used to comply with Part 819.
- (c) No permit shall be issued for any operations covered by this Section unless the Director finds, in writing, that in addition to meeting all other applicable requirements of this Subchapter, the operation will be conducted in compliance with Part 819.

SECTION 785.21

COAL PROCESSING PLANTS OR SUPPORT FACILITIES
NOT LOCATED WITHIN THE PERMIT AREA OF A
SPECIFIED MINE

5-29-80

- (a) This Section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations utilizing coal processing plants or support facilities not within a permit area of a specific mine. Any person who operates such a processing plant or support facility shall have obtained a permit from the Director under the State program in accordance with the requirements of this Section.
- (b) Any application for a permit for operations covered by this Section shall contain in the mining and reclamation plan, specific plans, including descriptions, maps and cross-sections of the construction, operation, maintenance and removal of the processing and associated support facilities. The plan shall demonstrate that those operations will be conducted in compliance with Part 827.
- (c) No permit shall be issued for any operation covered by this Section, unless the Director 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.

SECTION 785.22

IN SITU PROCESSING ACTIVITIES

5-29-80

- (a) This Section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations utilizing in situ processing activities.
- (b) Any application for a permit for operations covered by this Section shall be made according to all requirements of this Subchapter applicable to underground mining activities. In addition, the mining and reclamation operations plan for operations involving in situ processing activities shall contain information establishing how those operations will be conducted in compliance with the requirements of Part 828, including
 - (1) Delineation of proposed holes and wells and production zone for approval of the Director;
 - (2) Specifications of drill holes and casings proposed to be used;
 - (3) A plan for treatment, confinement or disposal of all acid- forming, toxic-forming or radioactive gases, solids, or liquids constituting a fire, health, safety or environmental hazard caused by the mining and recovery process; and

- (4) Plans for monitoring surface and ground water and air quality, as required by the Director.
- (c) No permit shall be issued for operations covered by this Section, unless the Director first finds, in writing, upon the basis of a complete application made in accordance with Paragraph (b) of this Section, that the operation will be conducted in compliance with all requirements of this Subchapter relating to underground mining activities, and Parts 816 and 828.

SECTION 785.25 LANDS ELIGIBLE FOR REMINING

12-05-97

- (a) This section contains permitting requirements to implement Section 786.17(c)(4). Any person who submits a permit application to conduct a surface coal mining operation on lands eligible for remining must comply with this section.
- (b) Any application for a permit under this section shall be made according to all requirements of this subchapter applicable to surface coal mining and reclamation operations. In addition, the application shall-
 - (1) To the extent not otherwise addressed in the permit application, identify potential environmental and safety problems related to prior mining activity at the site and that could be reasonably anticipated to occur. This identification shall be based on a due diligent investigation which shall include visual observations at the site, a record review of past mining at the site, and environmental sampling tailored to current site conditions.
 - (2) With regard to potential environmental and safety problems referred to in paragraph (b)(1) of this section, describe the mitigative measures that will be taken to ensure that the applicable reclamation requirements of the regulatory program can be met.
- (c) The requirements of this section shall not apply after September 30, 2004.

PART 786 -- REVIEW, PUBLIC PARTICIPATION, AND APPROVAL OR
DISAPPROVAL OF PERMIT APPLICATIONS AND PERMIT TERMS AND
CONDITIONS

SECTION

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SECTION 786.1 SCOPE

5-1-87

This Part establishes the requirements for

- (a) Agency and Public participation in the permit process;
- (b) The review of permit applications and decisions on these applications by the Director; and,
- (c) Approval or disapproval of permits to conduct surface coal mining and reclamation operations and for the terms and conditions of permits issued.

- (d) The Division to avoid duplication, provide for the coordination of review and issuance of permits for surface coal mining and reclamation operations with applicable requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.); the Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661 et seq.); the Migratory Bird Act of 1918, as amended (16 U.S.C. 703 et seq.); The National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 et seq.); the Bald Eagle Protection Act, as amended (16 U.S.C. 668 et seq.); Executive Order 11593; and for 668a); Executive Order 11593.

SECTION 786.2

OBJECTIVES

5-29-80

The objectives of this Part are to

- (a) Provide for broad and effective agency and public participation in the review of applications and the issuance, or denial of permits;
- (b) Ensure prompt and effective review of each permit application by the Director; and,
- (c) Provide the minimum requirements for the terms and conditions of permits issued and the criteria for approval or denial of a permit.

SECTION 786.4

RESPONSIBILITIES

5-29-80

- (a) The Director has the responsibility to approve or disapprove permit under the State program.
- (b) The Director and persons applying for permits under the State program shall involve the public throughout the permit process of the State program.
- (c) The Director shall assure implementation of the requirements of this Part under the State program.
- (d) The applicant shall provide all information in a complete permit application for review by the Director in Accordance with this Part and the State program.

SECTION 786.5

DEFINITIONS

10-29-92

- (a) Request for Guidance means the portion of an application for a permit to conduct surface coal mining and reclamation operations through which the Director, at the request of the

applicant, notifies the applicant whether, in the opinion of the Director, the level of detail of a portion of the application is sufficient and if not, what additional information is needed. The decision of the Director may be modified if valid comments or objections to the applicable portion of the application are timely filed.

- (b) As used in Sections 786.17(d) and 786.19(i);

Willful violation means an act or omission which violates the Act, State or Federal laws or regulations, or individual permit conditions, committed by a person who intends the result which actually occurs.

Irreparable damage to the environment means any damage to the environment that cannot be corrected by actions of the applicant.

- (c) For purposes of this subchapter, owned or controlled and owns and controls mean any one or a combination of the relationships specified in subparagraphs (1) and (2) of this definition --

(1)

- (i) Being a permittee of a surface coal mining operation;
- (ii) Based on instrument of ownership or voting securities, owning of record in excess of fifty percent (50%) of an entity; or
- (iii) Having any other relationship which gives one person authority directly or indirectly to determine the manner in which an applicant, an operator, or other entity conducts surface coal mining operations.

- (2) The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant surface coal mining operation is conducted:

- (i) Being an officer or director of an entity;
- (ii) Being the operator of a surface coal mining operation;
- (iii) Having the ability to commit the financial or real property assets or working resources of an entity;
- (iv) Being a general partner in a partnership;

- (v) Based on the instruments of ownership or the voting securities of a corporate entity, owning of record ten through fifty percent (10 - 50%) of the entity; or
- (vi) Owning or controlling coal to be mined by another person under a lease, sublease or other contract and having the right to receive such coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation.

SECTION 786.10

PRE-APPLICATION CONFERENCE

5-29-80

- (a) The Division encourages applicants who plan to file an application for a permit to conduct surface coal mining and reclamation operations to request a pre-application conference with the Director. The purpose of the pre-application conference is to define the scope of the application, to coordinate the application with other permits that might be required which the Division issues, and to respond to requests for guidance if appropriate.
- (b) In order to make the pre-application conference as beneficial as possible, the applicant should submit to the Division a permit area map and a general description of his proposed operation and a list of the permits issued by the Division his proposed operation may require. If the applicant is submitting any formal requests for guidance, the applicant should try to prepare as much of the information contained in the permit application with respect to that request as possible.
- (c) The Director shall assemble the following persons for the pre-application conference.
 - (1) A representative of the Mining and Reclamation Division;
 - (2) A representative of the Water Division,
 - (3) If it appears that a permit may be required from any other Division of the Department, a representative from that Division; and
 - (4) If it appears that a permit may be required from any other State or Federal agency, or that coordination with some other State or Federal agency would be beneficial, a representative of such agency.
- (d) A pre-application conference, or a request for a pre-application conference does not commence a proceeding for review of a permit application.

- (e) No later than thirty (30) days after the pre-application conference, the Director will notify the applicant of his responses to the request for guidance for which responses can be made.
- (f) For any permits issued by the Division that the applicant may need to commence or undertake operation, to the extent possible the Director shall
 - (1) Coordinate permit application requirements to prevent duplication; and
 - (2) Coordinate permit review, including public notification to avoid unnecessary delays.

SECTION 786.11

PUBLIC NOTICES OF FILING OF PERMIT APPLICATIONS

8-23-02

- (a) An applicant for a permit shall place an advertisement in a local newspaper of general circulation in the locality of the proposed surface coal mining and reclamation operations at least once a week for four consecutive weeks. The applicant shall place the advertisement in the newspaper at the same time the complete permit application is filed with the Division. A copy of the advertisement as it will appear in the newspaper shall be submitted to the Division. The advertisement shall contain, at a minimum, the following information:
 - (1) The name and business address of the applicant; and,
 - (2) A map or description which shall
 - (i) Clearly show or describe towns, rivers, streams, or other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the proposed permit area;
 - (ii) Clearly show or describe the exact location and boundaries of the proposed permit area;
 - (iii) State the name of the U.S. Geological Survey 7.5-minute quadrangle map(s) which contains the area shown or described; and
 - (iv) If a map is used, indicate the north point.
 - (3) The locations where a copy of the application is available for public inspection under paragraph (c) of this Section; and

- (4) The name and address of the person to whom written comments, objections, or requests for legislative public hearings on the application may be submitted under Sections 786.12-786.14.
 - (5) If an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road, except where public notice and hearing have previously been provided for this particular part of the road in accordance with Section 761.14 of this Chapter, a concise statement describing the public road, the particular part to be relocated or closed, and the approximate timing and duration of the relocation or closing.
- (b) Upon receipt of a complete application for a permit, the Director shall issue written notification of
 - (1) The applicant's intention to surface mine a particularly described tract of land;
 - (2) The application number;
 - (3) Where a copy of the application may be inspected;
 - (4) The time within which comments must be received; and
 - (5) Where comments must be submitted.
- (c) Written notification shall be sent to the following governmental agencies:
 - (1) Arkansas Geological Commission;
 - (2) Arkansas Game and Fish Commission; and, if the fish and wildlife study submitted with the permit application pursuant to Section 780.16 identifies the presence of any threatened or endangered species, the United States Fish and Wildlife Service;
 - (3) Arkansas Soil and Water Conservation Commission, and if the soil survey submitted with the permit application pursuant to Section 785.17 identifies any prime farmland within the proposed permit area, the U.S. Department of Agriculture;
 - (4) The Department of Arkansas Natural and Cultural Heritage;
 - (5) The State Energy Conservation and Policy Office;
 - (6) The Arkansas Department of Local Services;

- (7) The U.S. Environmental Protection Agency;
 - (8) The U.S. Department of Interior;
 - (9) The Regional Planning District Office for each District within the proposed permit area.
 - (10) The County Judge of each county within the proposed permit area.
 - (11) The Mayor or City Manager of the Municipality closest to the proposed permit area, and of each municipality within five miles of the proposed permit area;
 - (12) All sewage and water treatment authorities and water companies which either provide sewage or water services to users in the areas of the proposed operation or have water sources or collection, treatment or distribution facilities located in the area of the proposed operation; said authorities and companies shall be identified by the applicant in the permit application;
 - (13) All other Federal or State agencies, or divisions of the Division which have authority to issue all other permits or licenses needed by the applicant in connection with operations proposed by applicant; said agencies or divisions shall be identified by the applicant in the permit application;
 - (14) All Federal, State and local governmental entities which own an interest in lands within the proposed permit area, or within one (1) mile of the proposed permit area; such governmental agencies shall be identified by the applicant in the permit application; and
 - (15) Any other Federal, State and local governmental agencies which the Director finds to have jurisdiction over or an interest in the area of the proposed operations; the applicant shall submit an initial list of such governmental agencies as a part of the permit application.
- (d) Within sixty (60) days after receipt of a complete application for a permit, the Director shall conduct a permit review inspection and respond to all requests for guidance.
- (e)
- (1) The applicant shall make a full copy of his or her complete application for a permit available for the public to inspect and copy. This shall be done by filing a copy of the application submitted to the Director with the Circuit Clerk at the courthouse of the county where the mining is proposed to occur.
 - (2) The applicant shall file the copy of the complete application under paragraph (e) of this Section by the first date of newspaper advertisement of the application.

The applicant shall file any subsequent revision of the application with the Circuit Clerk at the same time the revision is submitted to the Division.

SECTION 786.12 OPPORTUNITY FOR SUBMISSION OF WRITTEN
COMMENTS ON PERMIT APPLICATIONS

5-29-80

- (a) Written comments on permit applications may be submitted to the Division by the public entities to whom notification is provided under Section 786.11(b), (c) with respect to the effects of the proposed mining operations on the environment within their area of responsibility.
- (b) These comments shall be submitted to the Division in writing and within thirty (30) days.
- (c) The Director shall immediately transmit a copy of all such comments for filing and public inspection with the Circuit Clerk where the applicant filed a copy of the application for permit under Section 786.11(e). A copy shall also be transmitted to the applicant.

SECTION 786.13 RIGHT TO FILE WRITTEN OBJECTIONS

5-29-80

- (a) Any person whose interests are or may be adversely affected or an officer or head of any Federal, State, or local government agency or authority shall have the right to file written objections to an initial or revised application for a permit with the Director, within thirty (30) days after the last publication of the newspaper notice required by Section 786.11(a).
- (b) The Director shall, immediately upon receipt of any written objections
 - (1) Transmit a copy of them to the applicant; and,
 - (2) File a copy for public inspection with the Circuit Clerk where the applicant filed a copy of the application for permit under Section 786.11(e).

- (a) Procedure for requests. Any person, whose interests are or may be adversely affected by the issuance of the permit, or the officer or head of any Federal, State or local government agency or authority may, in writing, request that the Director hold a legislative public hearing on any application permit in accordance with Section 28 of the Act. The request shall
- (1) Briefly summarize the issues to be raised by the requestor at the conference;
 - (2) State whether the requestor desires to have the conference conducted in the locality of the proposed mining operations;
 - (3) Be filed with the Division not later than thirty (30) days after the last publication of the newspaper advertisement placed by the applicant under Section 786.11(a); or ten (10) days after filing the objection, whichever is later.
- (b) Except as provided in (c) below, if a legislative public hearing is requested in accordance with Paragraph (a) of this Section, the Director shall hold a legislative public hearing within thirty (30) days following the receipt of the request. The legislative public hearing shall be conducted according to the following:
- (1) If requested under Paragraph (a)(2) of this Section, it shall be held in the locality of the proposed mine.
 - (2) The date, time, and location of the hearing shall be advertised by the Director in a newspaper of general circulation in the locality of the proposed mine at least two weeks prior to the scheduled hearing.
 - (3) If requested, in writing, by a hearing requestor in a reasonable time prior to the conference, the Director may arrange with the applicant to grant parties to the hearing access to the permit area for the purpose of gathering information relevant to the conference.
 - (4) The hearing shall be conducted in accordance with Section 28 of the Act. The transcript shall be maintained until final release of the bond.
- (c) Legislative Public Hearings held in accordance with this Section may be used by the Director as the public hearing required under Section 761.14(c) where the applicant proposes to relocate or close a public road or conduct surface coal mining operations within 100 feet, measured horizontally, of the outside right-of-way line of a public road.

SECTION 786.15

PUBLIC AVAILABILITY OF INFORMATION IN PERMIT
APPLICATIONS ON FILE WITH THE DIVISION

5-1-87

- (a) Information contained in permit applications on file with the Division shall be open, upon written request, for public inspection and copying at reasonable times.
- (1) Information pertaining to coal seams, test borings, core samples, or soil samples in permit applications shall be made available for inspection and copying to any person with an interest which is or may be adversely affected; and
 - (2) Information in permit applications which pertains only to the analysis of the chemical and physical properties of the coal to be mined (excepting information regarding mineral or elemental contents of such coal, which are potentially toxic in the environment) shall be kept confidential and not made a matter of public record; and
 - (3) Information in the reclamation plan portions of the application, which is required to be filed only under this section and which is not on public file pursuant to the rules, the State program, and State law, shall be held in confidence by the Director upon the written request of the applicant.
 - (4) Information on the nature and location of archeological resources on public land and Indian land will be kept confidential when required under the Archeological Resources Protection Act of 1979.

SECTION 786.16

PROTECTION OF CONFIDENTIAL INFORMATION

5-1-87

- (a) Any records, reports, or information obtained under the Surface Coal Mining and Reclamation Code (hereinafter the "Code") and any permits, permit applications, and related documentation shall be available to the public for inspection and copying; provided that upon a satisfactory showing to the Director that such records, reports, permits, documentation, or information, or any part thereof would, if made public, divulge methods or processes entitled to protection, the Director shall consider, treat and protect such information as confidential. The Division shall provide procedures, including notice and opportunity to be heard for persons both seeking and opposing disclosure, to ensure confidentiality of qualified confidential information.
- (b) It shall be the responsibility of the person claiming any information as confidential under the provisions of Section (a) above to clearly mark each page containing such information with the word "CONFIDENTIAL" and to submit an affidavit setting forth the reasons that said person believes that such information is entitled to protection.

- (c) Any document submitted to the Division which contains information for which the claim of confidential information is made shall be submitted in a sealed envelope marked "CONFIDENTIAL" and addressed to the Director. The document shall be submitted in two separate parts. The first part shall contain all information which is not deemed by the person preparing the report as confidential and shall include appropriate cross references to the second part which contains data, words, phrases, paragraphs, or pages and appropriate affidavits containing or relating to information which is claimed to be confidential.
- (d) No information shall be protected as confidential information by the Director unless it is submitted to him in accordance with the provisions of Section (c) above and no information which is submitted in accordance with the provisions of Section (c) above shall be afforded protection as confidential information unless the Director finds that such protection is authorized by the Code. The person who submits information claimed as confidential shall receive written notice from the Director as to whether the information has been accepted as confidential or not.
- (e) All information which meets the tests of Section (d) above shall be marked with the term "ACCEPTED" and shall be protected as confidential information. Whenever the Director finds that information which has been submitted as confidential information in accordance with Section (c) above does not meet the criteria of Section (d) above, he shall promptly notify the person submitting such information of his finding and shall give said persons reasonable opportunity to further justify his contention that the information deserves protection as a trade secret or to further limit the protection as a trade secret or to further limit the scope of information for which the request for protection is made. If said person fails to satisfactorily demonstrate to the Director that such information in the form presented to him meets the criteria of Section (d) above, he shall give written notice to the person submitting said information and advise him that 14 days hence the Division will no longer hold and protect said information as confidential.
- (f) All information which is accepted by the Director as confidential shall be stored in locked filing cabinets and only those personnel of the Division specifically designated by the Director shall have access to the information contained therein. No copies shall be made for internal Division or other use except with the written permission of the Director and of the person who submitted the information to the Division.
- (g) The person(s) designated by the Director to maintain confidential files are herein provided shall maintain a log showing the persons who have had access to the confidential files and the dates of such access.
- (h) As necessary to carry out the provisions of the Arkansas Surface Coal Mining and Reclamation Act of 1979, and confidential information acquired by the Division under the provisions of said act may be transmitted to other offices, employees, or authorized representatives of the State or United States provided that the owner or operator of the facility to which such information pertains is informed at least two weeks prior to such

transmittal and provided that such transmittal is made under a continuing restriction of confidentiality.

- (i) Nothing contained herein shall be construed so as to restrict the release of relevant confidential information during emergency situations.

SECTION 786.17

REVIEW OF PERMIT APPLICATIONS

12-05-97

- (a)
 - (1) The Director shall review the complete application and written comments, written objections submitted, and records of any legislative public hearing held under Sections 786.12-786.14. The applicant for a permit shall have the burden of establishing that his application is in compliance with all the requirements of the regulatory program.
 - (2) The Director shall determine the adequacy of the fish and wildlife plan submitted pursuant to Section 780.16 or Section 784.20, in consultation with State and Federal fish and wildlife management and conservation agencies having responsibilities for the management and protection of fish and wildlife or their habitats which may be affected or impacted by the proposed surface coal mining and reclamation operations.
- (b) If the Director decides to approve the application, he shall require that the applicant file the performance bond or provide other equivalent guarantee before the permit is issued, in accordance with the provisions of Subchapter J of this Chapter.
- (c) Review of violations
 - (1) If the Director determines from either the schedule submitted as part of the application under Section 778.14(c) or 782.14(c), or from other available information, that any surface mining operation owned or controlled either by the applicant or by any person who owns or controls the applicant is currently in violation of any law, rule, or regulation pertaining to air or water environmental protection of the United States, or any State law, rule, or regulation enacted pursuant to Federal law, rule or of any provisions of the Act, owes either delinquent civil penalties issued pursuant to Section 18 of the Act or delinquent abandoned mine reclamation fees, or has forfeited bonds where violations upon which the forfeitures were based have not been corrected, the Director shall not issue the permit. In the absence of a failure-to-abate cessation order, the Director may presume that a notice of violation issued pursuant to Section 843.12 of this chapter or under a Federal or State program has been or is being corrected to the

satisfaction of the agency with jurisdiction over the violation, except where evidence to the contrary is set forth in the permit application, or where the notice of violation is issued for nonpayment of abandoned mine land reclamation fees or civil penalties. If a current violation exists, the Director shall require the applicant or any person who owns or controls the applicant, before the issuance of the permit, to either -

- (i) Submit to the Director reviewing the application, proof which is satisfactory to the regulatory authority, division, or agency which has jurisdiction over such violation, that the violation --
 - (A) Has been corrected, or
 - (B) Is in the process of being corrected; or,
 - (ii) Establish to the Director reviewing such application that the applicant, or any person owned or controlled by either the applicant or any person who owns or controls the applicant, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of that violation. If the administrative or judicial authority either denies a stay applied for in the appeal or affirms the violation, then any surface coal mining operations being conducted under a permit issued according to this paragraph shall be immediately terminated, unless and until the provisions of paragraph (c)(1)(i), above, are satisfied.
- (2) Any permit that is issued on the basis of proof submitted under paragraph (c)(1)(i) of this section that a violation is in the process of being corrected, or pending the outcome of an appeal described in paragraph (c)(1)(ii) of this section, shall be conditionally issued.
 - (3) Before any final determination by the Director that the applicant, anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled operations with a demonstrated pattern of willful violations of such nature, duration, and with such resulting irreparable damage to the environment that indicates an attempt not to comply with the applicable provisions, the applicant, anyone who owns or controls the applicant, or the operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in the State program. Such hearing shall be conducted pursuant to Section 787.11.
 - (4)
 - (i) Subsequent to October 24, 1992, the prohibitions of paragraph (c) of this section regarding the issuance of a new permit shall not apply to any violation that:

- (A) Occurs after that date;
 - (B) Is unabated; and
 - (C) Results from an unanticipated event or condition that arises from a surface coal mining and reclamation operation on lands that are eligible for remining under a permit:
 - (1) Issued before September 30, 2004, or any renewals thereof; and
 - (2) Held by the person making application for the new permit.
- (ii) For permits issued under Section 785.25 of this Chapter, an event or condition shall be presumed to be unanticipated for the purposes of this paragraph if it:
 - (A) Arose after permit issuance;
 - (B) Was related to prior mining; and
 - (C) Was not identified in the permit.
- (d) Final compliance review. After an application is approved, but before the permit is issued, the Director shall reconsider his decision to approve the application, based on the compliance review required by paragraph (c)(1) of this section in light of any new information submitted under Sections 778.13(g) and 778.14(d) of this chapter.

SECTION 786.19

CRITERIA FOR PERMIT APPROVAL OR DENIAL

8-23-02

No permit or revision application shall be approved, unless the application affirmatively demonstrates and the Director finds, in writing, on the basis of information set forth in the application or from information otherwise available, which is documented in the approval and made available to the applicant, that

- (a) The permit application is accurate and complete and that all requirements of the Act, this Chapter, and the State program have been complied with.
- (b) The applicant has demonstrated that surface coal mining and reclamation operations, as

required by the Act, this Chapter, and the State program, can be feasibly accomplished under the mining and reclamation operations plan contained in the application.

- (c) The assessment of the probable cumulative impacts of all anticipated coal mining in the general area on the hydrologic balance, as described in Section 780.21(f) or 784.14, has been made by the Director, and the operations proposed under the application have been designed to prevent damage to the hydrologic balance outside the proposed permit area.
- (d) The proposed permit area is:
 - (1) Not included within an area designated unsuitable for surface coal mining operations under Parts 762 and 764 of this Chapter or within an area subject to the prohibitions of Section 761.11 of this Chapter; or,
 - (2) Not within an area under study for designation as unsuitable for surface coal mining operations in an administrative proceeding begun under Part 764 unless the applicant demonstrates that, before January 4, 1977, he or she has made substantial legal and financial commitments in relation to the operation for which he or she is applying for a permit; or,
 - (3) Not on any lands subject to the prohibitions or limitations of Sections 761.11(a), (f), or (g); or,
 - (4) Not on any State Parks, recreation areas or memorials except as provided for in Section 761.11; or,
 - (5) Not on any State Game and Fish Commission Wildlife Management Area except as provided in Section 761.11.
 - (6) The applicant has, if applicable, satisfied the requirements for approval of a long-term, intensive agricultural postmining land use, in accordance with the requirements of Section 816.111(d).
- (e) The proposed operations will not adversely affect any publicly-owned parks or places included or eligible for listing in the National Register of Historic Places, except as provided for in Section 761.11(c).
- (f) For operations involving the surface mining of coal where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the Director the documentation required under Section 778.15(b) or 782.15(b).
- (g) The applicant has either
 - (1) Submitted the proof required by Section 786.17(c)(1); or

- (2) Made the demonstration required by Section 786.17(c)(2).
- (h) The applicant has submitted proof that all reclamation fees required by Subchapter R of this Chapter have been paid.
 - (i) The applicant, anyone who owns or controls the applicant, or the operator, if other than the applicant, does not control and has not controlled mining operations with a demonstrated pattern of willful violations of such nature, duration, and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the applicable provisions.
 - (j) Surface coal mining and reclamation operations to be performed under the permit will not be inconsistent with other such operations anticipated to be performed in areas adjacent to the proposed permit area.
 - (k) The applicant will submit the performance bond or other equivalent guarantee required under Subchapter J and the State program, prior to the issuance of the permit.
 - (l) The applicant has with respect to prime farmland obtained either a negative determination or satisfied the requirements of Section 785.17.
 - (m) The proposed postmining land use of the permit area has been approved by the Director in accordance with the requirements of Sections 816.133.
 - (n) The Director has made all specific approvals required under Subchapter K of this Chapter.
 - (o) The Director has found that the activities would not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats as determined under the Endangered Species Act of 1973 (16 USC Sec 1531 et seq).
 - (p) The proposed operation will not adversely impact properties listed on or eligible for listing on the National Register of Historic Places. This finding may be supported by inclusion of appropriate permit conditions or operation plan changes to protect historic resources, or a documented decision that no additional protective measures are necessary.
 - (q) For a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of Section 816.107 of this Chapter, the site of the operation is a previously mined area as defined in Section 701.5 of this Chapter.
 - (r) For permits to be issued under Section 785.25 of this Chapter, the permit application must contain:

- (1) Lands eligible for remining;
- (2) An identification of the potential environmental and safety problems related to prior mining activity which could reasonably be anticipated to occur at the site; and
- (3) Mitigation plans to sufficiently address these potential environmental and safety problems so that reclamation as required by the applicable requirements of the regulatory program can be accomplished.

SECTION 786.21 CRITERIA FOR PERMIT APPROVAL OR DENIAL:
EXISTING STRUCTURES

5-29-80

- (a) No application for a permit or revision which proposes to use an existing structure in connection with or to facilitate the proposed surface coal mining and reclamation operation shall be approved, unless the applicant demonstrates and the Director finds, in writing, on the basis of information set forth in the complete application that
 - (1) If the applicant proposes to use an existing structure in accordance with exemption provided in Section 701.11(c)(1)(i)
 - (i) The structure meets the performance standards of the Act and Subchapter K of this Chapter; and
 - (ii) No significant harm to the environment or public health or safety will result from use of the structure.
 - (2)
 - (i) If the applicant proposes to use an existing structure in accordance with the exemption provided in Section 701.11(c)(1)(ii),
 - (A) The structure meets the performance standards of the Act and Subchapter B of Chapter 7 of 30 CFR;
 - (B) No significant harm to the environment or public health or safety will result from use of the structure; and
 - (C) The performance standards of Subchapter B of this Chapter 7 of 30 CFR are at least as stringent as the performance standards of Subchapter K of this Chapter.
 - (ii) If the Director finds that the structure meets the criteria of Paragraphs

(b)(1)(i) and (ii) of this Section, but does not meet the criterion of Paragraph (b)(1)(iii) of this Section, the Director shall require the applicant to submit a compliance plan for modification or reconstruction of the structure and shall find prior to the issuance of the permit that

- (A) The modification or reconstruction of the structure will bring the structure into compliance with the design and performance standards of Subchapter K of this Chapter as soon as possible, but not later than six months after issuance of the permit;
- (B) The risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction; and
- (C) The applicant will monitor the structure to determine compliance with the performance standards of Subchapter K of this Chapter.

- (b) Should the Director find that the existing structure cannot be reconstructed without causing significant harm to the environment or public health or safety, the applicant will be required to abandon the existing structure. The structure shall not be used for or to facilitate surface coal mining operations after the effective date of issuance of the permit. Abandonment of the structure shall proceed on a schedule approved by the Director, in compliance with Section 816.132.

SECTION 786.23

PERMIT APPROVAL OR DENIAL ACTIONS

5-29-80

- (a) The Director shall approve, require modification of, or deny all applications for permits under State programs on the basis of
 - (1) Complete applications for permits and revisions or renewals thereof;
 - (2) Public participation as provided for in this Subchapter;
 - (3) Compliance with any applicable provisions of Part 785; and
 - (4) Processing and review of applications as required by this Part.
- (b) The Director shall take action as required under Paragraph (a) of this Section, within the following times
 - (1) Initiation of the State programs. Except as provided for in Paragraph (b)(3) of this

Section and Section 771.13, a complete application submitted to the Division within the time required by Section 771.21(a)(1) shall be processed by the Director so that an application is approved or denied –

- (i) Within eight months after the date of approval of the State program, unless the Division is specifically enjoined from submitting a State program, or the Division is specifically enjoined from implementing the State program but in no case later than February 3, 1981; and,
 - (ii) If a legislative public hearing has been held pursuant to Section 28 of the Act and 786.14, within sixty (60) days from the close of hearing.
 - (2) Subsequent operation of the State programs. Except as provided for in Paragraph (b)(3) of this Section, a complete application submitted to the Division after the time required in Section 771.21(a)(1) and in accordance with Section 771.21(b) shall be processed by the Director, so that an application is approved or denied within the following times:
 - (i) If a legislative public hearing has been held under Section 28 of the Act and Section 786.14, within 60 days of the close of the hearing; or
 - (ii) If no legislative public hearing has been held under Section 786.14, then between 90 to 180 days after the receipt by the Division of the complete application. The Director shall process the application within 90 days unless:
 - (A) The proposed permit area is in excess of 100 acres and additional time needed for proper investigation of the proposed permit and adjacent areas;
 - (B) The application is unusually complex; or
 - (C) Written objections to or comments on the complete application have been filed with the Division.
 - (3) Notwithstanding any of the foregoing provisions of this Section, no time limit under the Act or this Section requiring the Director to act shall be considered expired from the time the applicant initiates a proceeding under Section 786.17(d) until the final decision of the Commission.
- (c) If a legislative public hearing is held under Section 786.14, the Director shall give his written findings to the permit applicant and to each person who is a party to the hearing, approving, modifying or denying the application in whole, or in part, and stating the specific reasons therefrom the decision.

- (d) If no such legislative public hearing has been held, the Director shall give his written findings to the permit applicant, approving, modifying or denying the application in whole, or in part, and stating the specific reasons in the decision.
- (e) Simultaneously, the Director shall
 - (1) Give a copy of his decision to:
 - (i) Each person and government official who filed a written objection or comment with respect to the application; and
 - (ii) The Regional Director together with a copy of any permit issued; and
 - (2) Publish a summary of his decision in a newspaper or similar periodical of general circulation in the general area of the proposed operation.
- (f) Within ten (10) days after the granting of a permit, including the filing of the performance bond or other equivalent guarantee which complies with Subchapter J of this Chapter, the Director shall notify the Mayor or City Manager of the municipality closest to the permit area and each municipality within five (5) miles of the permit area and to the County Judge of each county within the permit area that a permit has been issued and shall describe the location of the lands within the permit area.

SECTION 786.25 PERMIT TERMS

5-29-80

- (a) Each permit shall be issued for a fixed term not to exceed five (5) years. A longer fixed permit term may be granted, if
 - (1) The application is full and complete for the specified longer term; and
 - (2) The applicant shows that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing of equipment and the opening of the operation, and this need is confirmed, in writing, by the applicant's proposed source for the financing.
- (b)
 - (1) A permit shall terminate, if the permittee has not begun the surface coal mining and reclamation operation covered by the permit within three (3) years of the issuance of the permit.
 - (2) The Director may grant reasonable extensions of time for commencement of these operations, upon receipt of a written statement showing that such extensions of

time are necessary, if

- (i) Litigation precludes the commencement or threatens substantial economic loss to the permittee, or
 - (ii) There are conditions beyond the control and without the fault or negligence of the permittee.
- (3) With respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permittee shall be deemed to have commenced surface mining operations at the time that the construction of the synthetic fuel or generating facility is initiated.
- (4) Extensions of time granted by the Director under this paragraph shall be specifically set forth in the permit and notice of the extension shall be made to the public.
- (c) Permits may be suspended, revoked, or modified by the Director, in accordance with Sections 785.13, 785.15, 785.16, 785.18, and Subchapter L of this Chapter.

SECTION 786.27 CONDITIONS OF PERMITS: GENERAL AND RIGHT OF ENTRY

6-03-92

Each permit issued by the Director shall ensure that

- (a) Except to the extent that the Director otherwise directs in the permit that specific actions be taken, the permittee shall conduct all surface coal mining and reclamation operations as described in the complete application; and,
- (b) The permittee shall allow the authorized representatives of the Secretary or the Director, including, but not limited to, inspectors and fee compliance officers, without advance notice or a search warrant, upon presentation of appropriate credentials, and without delay, to
 - (1) Have the rights of entry provided for in Section 842.12 and 842.13; and,
 - (2) Be accompanied by private persons for the purpose of conducting an inspection in accordance with Part 842, when the inspection is in response to an alleged violation reported to the Director by the private person.
- (c) The permittee shall conduct surface coal mining and reclamation operations only on those lands specifically designated on the maps submitted under Parts 779-780 or 783-784 and

approved for the term of the permit and which are subject to the performance bond or other equivalent guarantee in effect pursuant to Subchapter J.

- (d) Within thirty (30) days after a cessation order is issued under Section 843.11 of this chapter for operations conducted under the permit, except where a stay of the cessation order is granted and remains in effect, the permittee shall either submit to the Director the following information, current to the date the cessation order was issued, or notify the Director in writing that there has been no change since the immediately preceding submittal of such information:
 - (1) Any new information needed to correct or update the information previously submitted to the Director by the permittee under Section 778.13(b) of this chapter; or
 - (2) If not previously submitted, the information required from a permit applicant by Section 778.13(b) of this chapter.

SECTION 786.29

CONDITIONS OF PERMITS: ENVIRONMENT, PUBLIC HEALTH, AND SAFETY

5-1-87

Each permit issued by the Director shall ensure and contain specific conditions requiring that the

- (a) Permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition of the permit, including, but not limited to:
 - (1) Establishing and maintaining appropriate records and making reports to the Director;
 - (2) Any accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance;
 - (3) Immediate implementation of measures necessary to comply; and
 - (4) Warning, as soon as possible after learning of such noncompliance, any person who health and safety is in imminent danger due to the noncompliance.
- (b) The permittee shall dispose of solids, sludge, filter backwash, or pollutants removed in the course of treatment or control of waters or emissions to the air in the manner required by Subchapter K of this Chapter, the State program, and which prevents violation of any other applicable State or Federal law.

- (c) The operator shall pay all reclamation fees required by 30 CFR 870 for coal produced under the permit for sale, transfer or use, in the manner required by that Subchapter.
- (d) The permittee shall conduct its operations
 - (1) In accordance with any measures specified in the permit as necessary to prevent significant, imminent environmental harm to the health or safety of the public; and,
 - (2) Utilizing any methods specified in the permit by the Director in approving alternative methods of compliance with the performance standards of the Act and the State program, in accordance with the provisions of the Act, Section 786.19(m), and Subchapter K.

SECTION 786.30 IMPROVIDENTLY ISSUED PERMITS: GENERAL PROCEDURES

6-03-92

- (a) Permit review. When the Director has reason to believe that he or she has improvidently issued a surface coal mining and reclamation permit, the Director shall review the circumstances under which the permit was issued, using the criteria in paragraph (b) of this section. Where the Director finds that the permit was improvidently issued, he or she shall comply with paragraph (c) of this section.
- (b) Review criteria. The Director shall find, in writing, that a surface coal mining and reclamation permit was improvidently issued if:
 - (1) Under the violations review criteria of the State program at the time the permit was issued:
 - (i) The Director should not have issued the permit because of an unabated violation or a delinquent penalty or fee; or
 - (ii) The permit was issued on the presumption that a notice of violation was in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation, but a cessation order subsequently was issued; and
 - (2) The violation, penalty or fee:
 - (i) Remains unabated or delinquent; and

- (ii) Is not the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; and
 - (3) Where the permittee was linked to the violation, penalty or fee through ownership or control, under the violations review criteria of the State program at the time the permit was issued an ownership or control link between the permittee and the person responsible for the violation, penalty or fee still exists, or where the link was severed the permittee continues to be responsible for the violation, penalty or fee.
- (c) Remedial measures. When the Director, under paragraph (b) of this section, finds that because of an unabated violation or delinquent penalty or fee a permit was improvidently issued shall use one or more of the following remedial measures:
- (1) Implement, with the cooperation of the permittee or other person responsible, and of the responsible agency, a plan for the abatement of the violation or a schedule for payment of the penalty or fee;
 - (2) Impose on the permit a condition requiring that in a reasonable period of time the permittee or other person responsible abate the violation or pay the penalty or fee;
 - (3) Suspend the permit until the violation is abated or the penalty or fee is paid; or
 - (4) Rescind the permit under Section 786.31 of this part.

SECTION 786.31 IMPROVIDENTLY ISSUED PERMITS:
RECISION PROCEDURES

6-03-92

When the Director, under Section 786.30(c)(4) of this part, elects to rescind an improvidently issued permit he or she shall serve on the permittee a notice of proposed suspension and rescision which includes the reasons for the finding of the Director under Section 786.30(b) of this part and states that:

- (a) Automatic suspension and rescision. After a specified period of time not to exceed ninety (90) days the permit automatically becomes suspended, and not to exceed ninety (90) days thereafter rescinded, unless within those periods the permittee submits proof, and the Director finds, that:
 - (1) The finding of the Director under Section 786.30(b) of this part was erroneous;

- (2) The permittee or other person responsible has abated the violation on which the finding was based, or paid the penalty or fee, to the satisfaction of the responsible agency;
 - (3) The violation, penalty or fee is the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; or
 - (4) Since the finding was made, the permittee has severed any ownership or control link with the person responsible for, and does not continue to be responsible for, the violation, penalty or fee;
- (b) Cessation of operations. After permit suspension or rescission, the permittee shall cease all surface coal mining and reclamation operations under the permit, except for violation abatement and for reclamation and other environmental protection measures as required by the Director; and
- (c) Right to appeal. The permittee may file an appeal for administrative review of the notice under Section 787.11 of this chapter.

PART 787 -- ADMINISTRATIVE AND JUDICIAL REVIEW OF DECISIONS BY
DIRECTOR ON PERMIT APPLICATIONS

SECTION

787.1	Scope
787.2	Objectives
787.11	Administrative Review
787.12	Judicial Review

SECTION 787.1 SCOPE

5-29-80

This part provides the requirements for administrative and judicial review of coal exploration approval application and permit decisions by the Director, or the failure of the Director to act on applications for coal exploration approval or permits.

SECTION 787.2 OBJECTIVES

5-29-80

The objectives of this Part are to provide for timely and thorough review by administrative and judicial bodies under the State programs on decisions of and failures to act by the Director under this Subchapter.

SECTION 787.11 ADMINISTRATIVE REVIEW

5-29-80

- (a) Within thirty (30) days after the applicant or permittee is notified of the final decision of the Director concerning the application for a permit, revision or renewal thereof, permit, application for transfer, sale, or assignment of rights, or concerning an application for coal exploration under Section 776.14, the applicant, permittee or any person with an interest which is or may be adversely affected may request an adjudicatory public hearing on the reasons for the final decision in accordance with Section 29 of the Act and this Section.
 - (1) The Commission shall commence the hearing within thirty (30) days of such request. No person who presided at the legislative public hearing under Section 786.14 shall either preside at the hearing, or participate in the decision following the hearing, or in any administrative appeal therefrom.

- (2) The Commission may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate, pending final determination of the proceeding, if:
 - (i) All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;
 - (ii) The person requesting that relief shows that there is a substantial likelihood that he or she will prevail on the merits of the final determination of the proceeding; and
 - (iii) The relief is not to affect adversely the public or safety, or cause significant, imminent environmental harm to land, air, or water resources; and
 - (iv) The relief sought is not the issuance of a permit where a permit has been denied, in whole or in part, by the Director.

SECTION 787.12 JUDICIAL REVIEW

5-29-80

- (a) Any applicant or any person with an interest which is or may be adversely affected and who has participated in the administrative proceedings as an objector shall have the right to appeal as provided in Paragraph (b) of this Section if
 - (1) The applicant or person is aggrieved by the decision of the Commission in the adjudicatory public hearing conducted pursuant to Section 29 of the Act and Section 787.11,; or,
 - (2) Either the Director or the Commission in an administrative review under Section 787.11 fails to act within time limits specified in the Act.(1)
- (b)
 - (1) Action of the Director or Commission identified in Paragraph (a) of this Section shall be subject to judicial review by the Circuit Court of Pulaski County or the county in which the surface coal mining operation is located, but the availability of such review shall not be construed to limit the operation of the rights established in Section 32 of the Act.

PART 788 -- PERMIT REVIEWS, REVISIONS, AND RENEWALS, AND TRANSFER,
SALE, AND ASSIGNMENT OF RIGHTS GRANTED UNDER PERMITS

SECTION

788.1	Scope
788.2	Objectives
788.3	Responsibilities
788.5	Definitions
788.11	Director's Review of Outstanding Permits
788.12	Permit Revisions
788.13	Permit Renewals: General Requirements
788.14	Permit Renewals: Completed Applications
788.15	Permit Renewals: Terms
788.16	Permit Renewals: Approval or Denial
788.17	Transfer, Assignment, or Sale of Permit Rights: General Requirements
788.18	Transfer, Assignment, or Sale of Permit Rights: Obtaining Approval
788.19	Requirements for New Permits for Persons Succeeding to Rights Granted Under a Permit

SECTION 788.1 SCOPE

5-29-80

This Part establishes the provisions for

- (a) Revisions to and affirmative periodic review of permits previously issued by the Director;
- (b) Renewal of permits previously issued by the Director, and
- (c) Transfer, sale, or assignment of rights granted under permits previously issued by the Director.

SECTION 788.2 OBJECTIVES

5-29-80

The objectives of this Part are to

- (a) Provide procedures for the Director to review, revise, and renew permits under the State program; and

- (b) Provide procedures for transfer, sale, or assignment of rights granted in permits under the State program.

SECTION 788.3 RESPONSIBILITIES

10-29-92

The Director shall

- (a) Ensure that the permits are revised prior to changes in surface coal mining and reclamation operations;
- (b) Ensure that all permits are regularly reviewed to determine that surface coal mining and reclamation operations under these permits are conducted in compliance with the Act, this Chapter, and the State program;
- (c) Effectively review and act on applications to renew existing permits, in a timely manner, to ensure that surface coal mining and reclamation operations continue, if they comply with the Act, this Chapter, and the State program; and;
- (d) Ensure that no person conducts surface coal mining and reclamation operations, through the transfer, sale, or assignment of rights granted under permits, without the prior approval of the Director.

SECTION 788.5 DEFINITIONS

5-29-80

As used in Section 788.17 through 788.19

Successor in interest means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

Transfer, assignment, or sale of rights means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the Director.

SECTION 788.11 DIRECTOR'S REVIEW OF OUTSTANDING PERMITS

5-29-80

- (a)
 - (1) The Director shall review each permit issued and outstanding under the State program during the term of the permit. This review shall occur not later than the

middle of the permit term and as required by Sections 785.13, 785.14, 785.16, and 785.18.

- (2) For permits of longer than five year terms, a review of the permit shall be no less frequent than the permit midterm or every five years, whichever is more frequent.
- (b) After this review, the Director may, by order, require reasonable revision or modification of the permit provisions to ensure compliance with the Act, this Chapter, and the State program.
- (c) Copies of the decision of the Director shall be sent to the permittee.
- (d) Any order of the Director requiring revision or modification of permits shall be based upon written findings and shall be subject to the provisions for administrative and judicial review of Part 787.

SECTION 788.12 PERMIT REVISIONS

5-29-80

- (a) A revision to a permit shall be obtained
 - (1) For changes in the surface coal mining or reclamation operations described in the original application and approved under the original permit, when such changes constitute a significant departure from the method of conduct of mining or reclamation operations contemplated by the original permit. A significant departure shall be a change in the mining and reclamation plans which may cause a significant and measurable impact on an environmental resource in a manner that was not addressed in the permit application; provided that mining and reclamation plans should be fluid to some extent, and changes in the method of operations or reclamation which were consistent with the basic plans approved in the permit application shall not be considered significant departures.
 - (2) In order to continue operation after the cancellation or material reduction of the liability insurance policy, capability of self-insurance, performance bond, or other equivalent guarantee upon which the original permit was issued;
- (b) The application for revision shall be filed in accordance with the following:
 - (1) The permittee shall submit the application to the Director within the time provided for by Section 771.21(b)(3);
 - (2) The scale or extent of permit application information requirements and procedures, including notice and hearings, applicable to revision requests shall be

as provided by the Director, provided that any application for a revision which proposes significant alterations in the operations described in the materials submitted in the application for the original permit under Part 778, 779, 780, 782, 783, 784, or 785 or in the conditions of the original permit, shall, at a minimum, be subject to the requirements of Parts 786 and 787.

- (c) Any extensions to the area covered by a permit, except for incidental boundary revisions, shall be made by application for a new permit and shall not be approved under this Part.

SECTION 788.13 PERMIT RENEWALS: GENERAL REQUIREMENTS

10-29-92

- (a) Any valid, existing permit issued pursuant to the State program shall carry with it the right of successive renewal upon expiration of the term of the permit, in accordance with Sections 788.14-788.16. Successive renewal shall be available only for those areas which were specifically approved by the Director on the application for the existing permit as within the boundaries of the permit.
- (b) Permit renewal shall not be available for conducting surface coal mining and reclamation operations on lands beyond the boundaries of the permit area approved under the existing permit. Approval of permits to conduct operations on these lands shall be obtained in accordance with Section 788.14(b)(2).

SECTION 788.14 PERMIT RENEWALS: COMPLETED APPLICATIONS

12-05-97

- (a) Contents. Complete applications for renewals of a permit shall be made within the time prescribed by Section 771.21(b)(2). Renewal applications shall be in a form and with contents required by the Director under the State program and in accordance with Paragraph (b)(2) of this Section, including at a minimum, the following:
 - (1) A statement of the name and address of the permittee, the term of the renewal requested, the permit number, and a description of any changes to the matters set forth in the original application for a permit or prior permit renewal;
 - (2) A copy of the newspaper notice and proof of publication of same under Section 786.11(a); and,
 - (3) Evidence that liability insurance policy or adequate self-insurance under Section 800.60 of this Chapter will be provided by the applicant for the proposed period of renewal.

(b) Processing and review.

- (1) Complete applications for renewal shall be subject to the requirements of public notification and participation contained in Section 786.11-786.14.
- (2) If a complete application for renewal of a permit includes a proposal to extend the mining and reclamation operation beyond the boundaries authorized in the existing permit, the portion of the complete application for renewal of a valid permit which addresses any new land areas shall be subject to the full standards applicable to new permit applications under the Act, Parts 771, 778, 779, 780, 782, 783, 784, 785, 786, 787, 788, and Subchapter J of this Chapter, and the State program.
- (3) Before finally acting to grant the permit renewal, the Director shall require any additional performance bond needed by the permittee to comply with the requirements of Section 788.16(a)(4) of be filed with the Division.

SECTION 788.15 PERMIT RENEWALS: TERMS

5-29-80

Any permit renewal shall be for a term not to exceed the period of the original permit established under Section 786.25.

SECTION 788.16 PERMIT RENEWALS: APPROVAL OR DENIAL

5-29-80

- (a) The Director shall, upon the basis of a complete application for renewal and completion of all procedures required under Sections 788.14-788.15, issue a renewal of a permit, unless it is established and written findings by the Director are made that
 - (1) The terms and conditions of the existing permit are not being satisfactorily met;
 - (2) The present surface coal mining and reclamation operations are not in compliance with the environmental protection standards under the Act, Subchapter K of this Chapter, and the State program;
 - (3) The requested renewal substantially jeopardizes the operator's continuing responsibility to comply with the Act, this Chapter and the State program on existing permit areas;
 - (4) The operator has not provided evidence that any performance bond required to be

in effect for the operations will continue in full force and effect for the proposed period of renewal, as well as any additional bond the Director might require pursuant to Subchapter J of this Chapter; or,

- (5) Any additional revised or updated information required by the Director has not been provided by the applicant,
- (b) In determining whether to approve or deny a renewal, the burden shall be on the opponents of renewal.
- (c) The Director shall send copies of his decision to the applicant, any persons who filed objections or comments to the renewal, and to any persons who were parties to any legislative public hearing held on the permit renewal.
- (d) Any person having an interest which is or may be adversely affected by the decision of the Director shall have the right to administrative and judicial review set forth in Part 787.

SECTION 788.17 TRANSFER, ASSIGNMENT, OR SALE OF PERMIT RIGHTS:
GENERAL REQUIREMENTS

5-29-80

No transfer, assignment, or sale of the rights granted under any permit issued pursuant to the State program shall be made without the prior written approval of the Director, in accordance with Sections 788.17-788.19.

SECTION 788.18 TRANSFER, ASSIGNMENTS, OR SALE OF PERMIT
RIGHTS: OBTAINING APPROVAL

5-01-87

- (a) Any person seeking to succeed by transfer, assignment, or sale of the right granted by a permit issued under the State program shall, prior to the date of such transfer, assignment or sale
 - (1) Obtain the performance bond coverage of the original permittee by
 - (i) Obtaining transfer of the original bond;
 - (ii) Obtaining a written agreement with the original permittee and all subsequent successors in interest (if any) that the bond posted by the original permittee and all successors shall continue in force on all areas affected by successors shall continue in force on all areas affected by the original permittee and all successors, and supplementing such previous

bonding with such additional bond as may be required by the Director. If such an agreement is reached, the Director may authorize for each previous successor and the original permittee the release of any remaining amount of bond in excess of that required by the agreement;

- (iii) Providing sufficient bond to cover the original permit in its entirety from inception to completion of reclamation operations; or
 - (iv) Such other methods as would provide that reclamation of all areas affected by the original permittee is assured under bonding coverage at least equal to that of the original permittee; and
- (2) Provide the Director with an application for approval of such proposed transfer, assignment, or sale, including
- (i) The name and address of the existing permittee;
 - (ii) The name and address of the person proposing to succeed by such transfer, assignment, or sale and the name and address of that person's resident agent;
 - (iii) For surface mining activities, the same information as is required by Section 778.13, 778.14, 778.15, 778.16(c), 778.18 and 778.19 for applications for new permits for those activities; or
 - (iv) For underground mining activities, the same information as is required by Section 782.13, 782.14, 782.15, 782.16(c), 782.18 and 782.19 for applications for new permits for those activities.
- (3) Obtain the written approval of the Director for transfer, assignment, or sale of rights, according to paragraph (c) of this Section.

(b)

- (1) The person applying for approval of such transfer, assignment or sale of rights granted by a permit shall advertise the filing of the application in a newspaper of general circulation in the locality of the operations involved, indicating the name and address of the applicant, the original permittee, the number and particular geographic location of the permit, and the address to which written comments may be sent under this Paragraph.
- (2) Any person whose interests are or may be adversely affected, including, but not limited to, the head of any local, State or Federal government agency may submit written comments on the application for approval to the Director, within thirty (30) days.

- (c) The Director may, upon the basis of the applicant's compliance with the requirements of Paragraphs (a) and (b) of this Section, grant written approval for the transfer, sale, or assignment of rights under a permit, if it first finds, in writing, that
 - (1) The person seeking approval will conduct the operations covered by the permit in accordance with the criteria specified in Part 785 and Section 786.19-786.21 and the requirements of the Act, this Chapter, and the State program;
 - (2) The applicant has, in accordance with Section 788.18(a)(1), submitted a performance bond or other guarantee as required by Subchapter J and at least equivalent to the bond or other guarantee of the original permittee; and
 - (3) The applicant will continue to conduct the operations involved in full compliance with the terms and conditions of the original permit, unless and until it has obtained a new permit in accordance with this Subchapter as required in Section 788.19.
- (d) Notification
 - (1) The Division shall notify the permittee, the successor, commenters, and OSM, if OSM is not the regulatory authority of its finding.
 - (2) The successor shall immediately provide notice to the Division of the consummation of the transfer, assignment, or sale of permit rights.

SECTION 788.19 REQUIREMENTS FOR NEW PERMITS FOR PERSONS
SUCCEEDING TO RIGHTS GRANTED UNDER A PERMIT
5-29-80

- (a) A successor in interest to a permittee who is able to obtain the bond coverage of the original permittee may continue surface coal mining and reclamation operations according to the approved mining and reclamation plan and permit of the original permittee.
- (b) Pursuant to Section 788.18(c)(3), any successor in interest seeking to change the conditions of mining or reclamation operations, or any of the terms or conditions of the original permit shall
 - (1) Make application for a new permit under Parts 771-787, if the change involves conducting operations outside the original permit area; or
 - (2) Make application for a revised permit under Section 788.12.

SUBCHAPTER H -- SMALL OPERATOR ASSISTANCE

PART 795 -- SMALL OPERATOR ASSISTANCE

SECTION

795.1	Scope
795.2	Objective
795.4	Responsibilities
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SECTION 795.1

SCOPE

5-29-80

This part comprises the small operator assistance program (Program) and governs the procedures for providing assistance to qualified small mine operators who request assistance under Section 13(c) of the Act, for

- (a) The determination of the probable hydrologic consequences of mining and reclamation, under Section 13(c)(2) of the Act; and
- (b) The statement of physical and chemical analyses of test borings or core samples, under Section 13(c)(2) of the Act.

SECTION 795.2

OBJECTIVE

5-29-80

The objective of this part is to meet the intent of Section 13(c) of the Act by

- (a) Providing financial and other necessary assistance to qualified small operators; and

- (b) Assuring that the Director shall have sufficient information to make a reasonable assessment of the probable cumulative impacts of all anticipated mining upon the hydrology of the area and particularly upon water availability.

SECTION 795.4 RESPONSIBILITIES

5-29-80

- (a) Director. Once the Director initiates the Program, he shall
- (1) Review requests for assistance and determine qualified operators;
 - (2) Develop and maintain a list of qualified laboratories, and select and pay laboratories for services rendered;
 - (3) Conduct periodic on-site evaluations of the Program activities with the appropriate small operator; and
 - (4) Participate with OSM in data coordination activities with the U.S. Geological Survey, U.S. Environmental Protection Agency, and other appropriate agencies or institutions.

SECTION 795.5 DEFINITIONS

5-29-80

As used in this part

Monitoring means the collection of environmental data by either continuous or periodic sampling methods.

Probable cumulative impacts means the expected total qualitative, and cognitive, direct and indirect effects of mining and reclamation activities on the hydrologic regime.

Probable hydrologic consequence means the projected result of proposed surface coal mining and reclamation operations which may reasonably be expected to change the quantity or quality of the surface and ground water; the surface or ground water flow, timing and pattern; the stream channel conditions; and the aquatic habitat on the permit area and other affected areas.

- (a) To the extent possible with available funds, the Director shall select and pay a qualified laboratory to make the determination and statement and provide other services referenced in paragraph (b) of this section for eligible operators who request assistance.
- (b) The Director shall determine the data needed for each applicant or group of applicants. Data collected and the results provided to the Director shall be sufficient to satisfy the requirements for:
 - (1) The determination of the probably hydrologic consequences of the surface mining and reclamation operation in the proposed permit area and adjacent areas, including the engineering analyses and designs necessary for the determination in accordance with Sections 780.21(f) and 784.14 and any other applicable provisions of this Chapter;
 - (2) The drilling and statement of the results of test borings or core samplings for the proposed permit area in accordance with Sections 779.14(b) and 783.14(b) and any other applicable provisions of the Chapter;
 - (3) The development of cross-section maps and plans required by Section 779.25 and 783.25.
 - (4) The collection of archaeological and historic information and related plans required by Sections 779.12(b) and 783.12 and Sections 780.31 and 784.17 and any other archaeological and historic information required by the Division;
 - (5) Pre-blast surveys required by Section 780.13; and
 - (6) The collection of site-specific resources information, the production of protection and enhancement plans for fish and wildlife habitats required by Section 780.16 and 784.21, and information and plans for any other environmental values required by the Division under the Act.
- (c) Data collection and analysis may proceed concurrently with the development of mining and reclamation plans by the operator.
- (d) Data collected under this program shall be made publicly available in accordance with Section 786.15 of this Chapter. The Division shall develop procedures for interstate coordination and exchange of data.

SECTION 795.13

ELIGIBILITY FOR ASSISTANCE

12-05-97

- (a) An applicant is eligible for assistance if he or she
 - (1) Intends to apply for a permit pursuant to the Act;
 - (2) Establishes that his or her probable total attributed annual production from all locations on which the operator is issued the surface coal mining and reclamation permit will not exceed 300,000 tons. Production from the following operations shall be attributed to the applicant:
 - (i) The pro rate share, based upon percentage of ownership of applicant, of coal produced by operations in which the applicant owns more than a 10 percent interest;
 - (ii) The pro rata share, based upon percentage of ownership of applicant, of coal produced in other operations by persons who own more than 10 percent of the applicant's operation;
 - (iii) All coal produced by operations owned by persons who directly or indirectly control the applicant by reason of direction of the management;
 - (iv) All coal produced by operations owned by members of the applicant's family and the applicant's relatives, unless it is established that there is no direct or indirect business relationship between or among them.
 - (3) Is not restricted in any manner from receiving a permit under the permanent regulatory program; and
 - (4) Does not organize or reorganize his or her company solely for the purpose of obtaining assistance under the SOAP.

SECTION 795.14

FILING FOR ASSISTANCE

5-01-87

Each applicant shall submit the following information to the Director at any time after initiation of the Small Operator Assistance Program

- (a) A statement of intent to file a permit application;

- (b) The names and addresses of
 - (1) The potential permit applicant;
 - (2) The potential operator if different from the applicant.
- (c) A schedule of the estimated total production of coal from the proposed permit area and all other locations from which production is attributed to the applicant under Section 795.13. The schedule shall include for each location
 - (1) The name under which coal is or will be mined;
 - (2) The permit number and Mining Enforcement and Safety Administration identification number;
 - (3) The actual coal production for the year preceding the application for assistance and that portion of the production attributed to the applicant; and
 - (4) The estimated coal production for each year of the proposed permit and that portion attributed to the applicant.
- (d) A description of
 - (1) The method of surface coal mining operation proposed;
 - (2) The anticipated starting and termination dates of mining operations;
 - (3) The number of acres of land to be affected by the proposed mining; and
 - (4) A general statement on the probable depth and thickness of the coal resource including a statement of coal reserves in the permit area and the method by which they were calculated.
- (e) A U.S. Geological Survey topographic map of 1:24,000 scale or larger or other topographic map of equivalent detail which clearly shows
 - (1) The area of land to be affected and the natural drainage above and below the affected area;
 - (2) The names of property owners within the area to be affected and of adjacent lands;
 - (3) The location of existing structure and developed water sources within the area to be affected and on adjacent lands;

- (4) The location of existing and proposed test boring or core samples; and
- (5) The location and extent of known working of any underground mines.
- (f) Copies of documents which show that
 - (1) The applicant has a legal right to enter and commence mining within the permit area; and
 - (2) A legal right of entry has been obtained for OSM, the Director or his authorized representative and laboratory personnel to inspect the lands to be mined and adjacent lands which may be affected to collect environmental data or install necessary instruments.

SECTION 795.15

APPLICATION APPROVAL AND NOTICE

5-29-80

- (a) If the Director finds the applicant eligible, and he does not have information readily available which would preclude issuance of a permit to the applicant for mining in the area proposed, he shall
 - (1) Determine the minimum data requirements necessary to meet the provisions of Section 795.16.
 - (2) Select the services of one or more qualified laboratories to perform the required work. A copy of the contract or other appropriate work order and the final approved report shall be provided to the applicant.
- (b) The Director shall inform the applicant in writing if the application is denied and shall state the reasons for denial.
- (c) The granting of assistance under this part shall not be a factor in decisions by the Director on a subsequent permit application.

SECTION 795.17

QUALIFIED LABORATORIES

12-05-97

- (a) General.
 - (1) As used in this section, qualified laboratory means a designated public agency,

private consulting firm, institution, or analytical laboratory which can provide the required determination of probable hydrologic consequences or statement of results of test borings or core samplings or other services as specified at Section 795.12 under this Program and that meets the standards of this section.

- (2) The Director shall designate qualified laboratories under procedures included in the State program.
- (3) Persons who desire to be included in the list of qualified laboratories shall apply to the Director and provide such information as is necessary to establish the qualifications required by paragraph (b) of this section.

(b) Basic Qualifications.

- (1) To qualify for designation, the laboratory shall demonstrate that it
 - (i) Is staffed with experienced, professional personnel in the fields of hydrology, mining engineering, aquatic biology, geology or chemistry applicable to the work to be performed.
 - (ii) Is capable of collecting necessary field data and samples.
 - (iii) Has adequate space for material preparation, cleaning and sterilizing necessary equipment, stationary equipment, storage, and space to accommodate periods of peak work loads.
 - (iv) Meets the requirements of the Occupational Safety and Health Act or the equivalent State Safety and Health program.
 - (v) Has the financial capability and business organization necessary to perform the work required.
 - (vi) Has analytical, monitoring and measuring equipment capable of meeting the applicable standards and methods contained in
 - (A) Standard Methods for the Examination of Water and Waste Water, 14th Edition, 1975. A copy of this publication is available for inspection at the Central Office and the publication is available from the American Public Health Association, 1015 18th Street, NW, Washington, D.C. 20036.
 - (B) Methods for Chemical Analysis of Water and Wastes, 1974. This publication is available from the Office of Technology Transfer, U.S. Environmental Protection Agency, Industrial

Environmental Research Laboratory, Cincinnati, Ohio 45268. These standards are hereby incorporated by reference. A copy of this publication is available for inspection at the Central Office.

- (C) Has the capability of making hydrologic field measurements and analytical laboratory determinations by acceptable hydrologic engineering or analytical methods, or by those appropriate methods or guidelines for data acquisition recommended by OSM or other Federal or State agencies.
- (vii) The qualified laboratory shall be capable of performing either the determination or statement under paragraphs Section 795.12(b)(1) or (b)(2). Subcontractors may be used to provide the services required provided their use is defined in the application for designation and approved by OSM.

SECTION 795.18

ASSISTANCE FUNDING

5-29-80

- (a) Use of funds. Funds authorized for this Program shall not be used to cover State administrative costs or the costs of test boring or core sampling.
- (b) Allocation of funds. The Director shall to the extent practicable establish a formula for allocating funds among eligible small operators if available funds are less than those required to provide the services pursuant to this Part. This formula shall include such factors as the applicant's
 - (1) Anticipated date of filing a permit application;
 - (2) Anticipated date for commencing mining; and
 - (3) Performance history.

SECTION 795.19

APPLICANT LIABILITY

12-05-97

- (a) The applicant shall reimburse the Division for the cost of the services performed pursuant to this Part if:
 - (1) The applicant submits false information;

- (2) The applicant fails to submit a permit application within one year from the date of receipt of the approved laboratory report;
 - (3) The applicant fails to mine after obtaining a permit;
 - (4) The Director finds that the applicant's actual and attributed annual production of coal for all locations exceeds 300,000 tons during the 12 months immediately following the date on which the operator is issued the surface coal mining and reclamation permit; or
 - (5) The permit is sold, transferred, or assigned to another person and the transferees' total actual and attributed production exceeds the 300,000 ton production limit during the 12 months immediately following the date on which the permit was originally issued. Under this paragraph the applicant and its successor are jointly and severally obligated to reimburse the Division.
- (b) The Director may waive the reimbursement obligation if he finds that the applicant at all times acted in good faith.

SUBCHAPTER J -- BOND AND INSURANCE REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS

PART 800 --- BONDS AND INSURANCE REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS UNDER THE STATE PROGRAM

SECTION

800.1	Scope and Purpose
800.4	Director's Responsibilities
800.5	Definitions
800.11	Requirement to File a Bond
800.12	Form of the Performance Bonds
800.13	Period of Liability
800.14	Determination of Bond Amount
800.15	Adjustment of Amount
800.16	General Terms and Conditions of Bond
800.17	Bonding Requirements for Underground Coal Mines and Long-term Coal-related Surface Facilities and Structures
800.20	Surety Bonds
800.21	Collateral Bonds
800.23	Self-bonding
800.30	Replacement of Bonds
800.40	Requirement to Release Performance Bonds
800.50	Forfeiture of Bonds
800.60	Terms and Conditions for Liability Insurance

SECTION 800.1 SCOPE AND PURPOSE

12-05-97

This part sets forth the minimum requirements for filing and maintaining bonds and insurance for surface coal mining and reclamation operations under the state program in accordance with the Act.

SECTION 800.4 DIRECTOR-S RESPONSIBILITIES

12-05-97

- (a) The Director shall prescribe and furnish forms for filing performance bonds.
- (b) The Director shall prescribe by rule terms and conditions for performance bonds and insurance.
- (c) The Director shall determine the amount of the bond for each area to be bonded, in

accordance with Section 800.14. The Director shall also adjust the amount as acreage in the permit area is revised, or when other relevant conditions change according to the requirements of Section 800.15.

- (d) The Director may accept a self-bond if the permittee meets the requirements of Section 800.23 and any additional requirements in the state or Federal program.
- (e) The Director shall release liability under a bond or bonds in accordance with Section 800.40.
- (f) If the conditions specified in Section 800.50 occur, the Director shall take appropriate action to cause all or part of a bond to be forfeited in accordance with procedures of that Section.
- (g) The Director shall require in the permit that adequate bond coverage be in effect at all times. Except as provided in Section 800.16(e)(2), operating without a bond is a violation of a condition upon which the permit is issued.

SECTION 800.5

DEFINITIONS

12-05-97

- (a) Surety bond means an indemnity agreement in a sum certain payable to the Division, executed by the permittee as principal and which is supported by the performance guarantee of a corporation licensed to do business as a surety in the state of Arkansas.
- (b) Collateral bond means an indemnity agreement in a sum certain executed by the permittee as principal which is supported by the deposit with the Division of one or more of the following:
 - (1) A cash account, which shall be the deposit of cash in one or more federally-insured or equivalently protected account, payable only to the Division upon demand, or the deposit of cash directly with the Division;
 - (2) Negotiable bonds of the United States, a state, or a municipality, endorsed to the order of, and placed in the possession of, the Division;
 - (3) Negotiable certificates of deposit, made payable or assigned to the Division and placed in its possession or held by a federally-insured bank;
 - (4) An irrevocable letter of credit of any bank organized or authorized to transact business in the United States, payable only to the Division upon presentation;

- (5) A perfected, first-lien security interest in real property in favor of the Division;
or
 - (6) Other investment-grade rated securities having a rating of AAA, AA, or A or an equivalent rating issued by a nationally recognized securities rating service, endorsed to the order of, and placed in the possession of, the Division.
- (c) Self-bond means an indemnity agreement in a sum certain executed by the applicant or by the applicant and any corporate guarantor and made payable to the Division, with or without separate surety.

SECTION 800.11 REQUIREMENT TO FILE A BOND

12-05-97

- (a) After a permit application under Subchapter G of this Chapter has been approved, but before such permit is issued, the applicant shall file with the Division, on a form prescribed and furnished by the Director, a bond or bonds for performance made payable to the Division and conditioned upon the faithful performance of all the requirements of the Act, the regulatory program, the permit, and the reclamation plan.
- (b)
 - (1) The bond or bonds shall cover the entire permit area, or an identified increment of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations during the initial term of the permit.
 - (2) As surface coal mining and reclamation operations on succeeding increments are initiated and conducted within the permit area, the permittee shall file with the Division an additional bond or bonds to cover such increments in accordance with this Section.
 - (3) The operator shall identify the initial and successive areas or increments for bonding on the permit application map submitted for approval as provided in the application (under Parts 780 and 784 of this Chapter), and shall specify the bond amount to be provided for each area or increment.
 - (4) Independent increments shall be of sufficient size and configuration to provide for efficient reclamation operations should reclamation by the Division become necessary pursuant to Section 800.50.
- (c) An operator shall not disturb any surface area, succeeding increments, or extend any

underground shafts, tunnels or operation prior to acceptance by the Director of the required performance bond.

- (d) The applicant shall file, with the approval of the Director, a bond or bonds under one of the following schemes to cover the bond amounts for the permit area as determined in accordance with Section 800.14:
 - (1) A performance bond or bonds for the entire permit area:
 - (2) A cumulative bond schedule and the performance bond required for full reclamation of the initial area to be disturbed; or
 - (3) An incremental-bond schedule and the performance bond required for the first increment in the schedule.

SECTION 800.12

FORM OF THE PERFORMANCE BOND

12-05-97

The Director shall prescribe the form of the performance bond. The Director may allow for:

- (a) A surety bond;
- (b) A collateral bond;
- (c) A self-bond; or
- (d) A combination of any of these bonding methods.

SECTION 800.13

PERIOD OF LIABILITY

12-05-97

- (a)
 - (1) Performance bond liability shall be for the duration of the surface coal mining and reclamation operation and for a period which is coincident with the operator's period of extended responsibility for successful revegetation provided in Section 816.116 of this Chapter or until achievement of the reclamation requirements of the Act, the state program, and permit, whichever is later.
 - (2) With the approval of the Director, a bond may be posted and approved to guarantee specific phases of reclamation within the permit area provided the sum of phase bonds posted equals or exceeds the total amount required under Section

800.14 and 800.15. The scope of work to be guaranteed and the liability assumed under each phase bond shall be specified in detail.

- (b) Isolated and clearly defined portions of the permit area requiring extended liability may be separated from the original area and bonded separately with the approval of the Director. Such areas shall be limited in extent and not constitute a scattered, intermittent, or checkerboard pattern of failure. Access to the separate areas for remedial work may be included in the area under extended liability if deemed necessary by the Director.
- (c) If the Director approves a long-term, intensive agricultural postmining land use, in accordance with Section 816.133 of this Chapter, the applicable 5-year period of liability shall commence at the date of initial planting for such long-term agricultural use.
- (d)
 - (1) The bond liability of the permittee shall include only those actions which he or she is obligated to take under the permit, including completion of the reclamation plan, so that the land will be capable of supporting the postmining land use approved under Section 816.133 of this Chapter.
 - (2) Implementation of an alternative postmining land use approved under Section 816.133(c) which is beyond the control of the permittee, need not be covered by the bond. Bond liability for prime farmland shall be as specified in Section 800.40(c)(2).

SECTION 800.14

DETERMINATION OF BOND AMOUNT

12-05-97

- (a) The amount of the bond required for each bonded area shall:
 - (1) Be determined by the Director;
 - (2) Depend upon the requirements of the approved permit and reclamation plan;
 - (3) Reflect the probable difficulty of reclamation, giving consideration to such factors as topography, geology, hydrology, and revegetation potential; and
 - (4) Be based on, but not limited to, the estimated cost submitted by the permit applicant.
- (b) The amount of the bond shall be sufficient to assure the completion of the reclamation plan

if the work has to be performed by the Division in the even of forfeiture, and in no case shall the total bond initially posted for the entire area under one (1) permit be less than \$10,000.

- (c) An operator's financial responsibility under Section 816.121-U(c) of this Chapter for repairing material damage resulting from subsidence may be satisfied by the liability insurance policy required under Section 800.60.

SECTION 800.15 ADJUSTMENT OF AMOUNT

12-05-97

- (a) The amount of the bond or deposit required and the terms of the acceptance of the applicant's bond shall be adjusted by the Director from time to time as the area required bond coverage is increased or decreased or where the cost of the future reclamation changes. The Director may specify periodic times or set a schedule for reevaluating and adjusting the bond amount to fulfill this requirement.
- (b) The Director shall--
 - (1) Notify the permittee, the surety, and any person with a property interest in collateral who has requested notification under Section 800.21(f) of any proposed adjustment to the bond amount; and
 - (2) Provide the permittee an opportunity for an informal conference on the adjustment.
- (c) A permittee may request reduction of the amount of the performance bond upon submission of evidence to the Director proving that the permittee's method of operation or other circumstances reduces the estimated cost for the Division to reclaim the boned area. Bonds adjustments which involved undisturbed land or revision of the cost estimate of reclamation are not considered bond release subject to procedures of Section 800.40.
- (d) In the event that an approved permit is revised in accordance with Subchapter G of this Chapter, the Director shall review the bond for adequacy and, if necessary, shall require adjustment of the bond to conform to the permit as revised.

SECTION 800.16 GENERAL TERMS AND CONDITIONS OF BOND

12-05-97

- (a) The performance bond shall be in an amount determined by the Director as provided in Section 800.14.

- (b) The performance bond shall be payable to the Division.
- (c) The performance bond shall be conditioned upon faithful performance of all the requirements of the Act, this Chapter, the regulatory program, and the approved permit, including completion of the reclamation plan.
- (d) The duration of the bond shall be for the time period provided in Section 800.13.
- (e)
 - (1) The bond shall provide a mechanism for a bank or surety company to give prompt notice to the Director and the permittee of any action filed alleging the insolvency or bankruptcy of the surety company, the bank, or the permittee, or alleging any violation which would result in suspension or revocation of the surety or bank charter or license to do business.
 - (2) Upon the incapacity of bank or surety company by reason of bankruptcy, insolvency or suspension or revocation of a charter or license, the permittee shall be deemed to be without bond coverage and shall promptly notify the Director. The Director, upon notification received through the procedures of Paragraph (e)(1) of this Section or from the permittee, shall, in writing, notify the operator who is without bond coverage and specify a reasonable period, not to exceed 90 days, to replace bond coverage. If an adequate bond is not posted by the end of the period allowed, the operator shall cease coal extraction and shall comply with the provision of Section 816.132 of this Chapter and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Mining operations shall not resume until the Director has determined that an acceptable bond has been posted.

SECTION 800.17 BONDING REQUIREMENTS FOR UNDERGROUND COAL
MINES AND LONG-TERM COAL-RELATED SURFACE
FACILITIES AND STRUCTURES

12-05-97

- (a) Responsibilities. The Director shall require bond coverage, in an amount determined under Section 800.14, for long-term surface facilities and structures, and for areas disturbed by surface impacts incident to underground mines, for which a permit is required. Specific reclamation techniques required for underground mines and long-term facilities shall be considered in determining the amount of bond to complete the reclamation.
- (b) Long-term period of liability.

- (1) The period of liability for every bond covering long-term surface disturbances shall commence with the issuance of a permit, except that to the extent that such disturbances will occur on a succeeding increment to be bonded, such liability will commence upon the posting of the bond for that increment before the initial surface disturbance of that increment. The liability period shall extend until all reclamation, restoration, and abatement work under the permit has been completed and the bond is released under the provision of Section 800.40, or until the bond has been replaced or extended in accordance with Section 800.17(b)(3).
 - (2) Long-term surface disturbances shall include long-term coal-related surface facilities and structures, and surface impacts incident to underground coal mining, which disturb an area for a period that exceeds 5 years. Long-term surface disturbances include, but are not limited to: surface features of shafts and slope facilities, coal refuse areas, powerlines, bore-holes, ventilation shafts, preparation plants, machine shops, and loading and treatment facilities.
 - (3) To achieve continuous bond coverage for long-term surface disturbances, the bond shall be conditioned upon extension, replacement, or payment in full, 30 days prior to the expiration of the bond term.
 - (4) Continuous bond coverage shall apply throughout the period of extended responsibility for successful revegetation and until the provisions of Section 800.40 have been met.
- (c) Bond forfeiture. The Director shall take action to forfeit a bond pursuant to this Section, if 30 days prior to bond expiration, the operator has not filed:
- (1) A performance bond for a new term as required for continuous coverage, or
 - (2) A performance bond providing coverage for the period of liability including the period of extended responsibility for successful revegetation.

SECTION 800.20 SURETY BONDS

12-05-97

- (a) A Surety bond shall be executed by the operator and a corporate surety licensed to do business in the state of Arkansas.
- (b) Surety bonds shall be noncancellable during their terms except that surety bond coverage for lands not disturbed may be canceled with the prior consent of the Director. The Director shall advise the surety, within 30 days after receipt of a notice to canceled bond,

whether the bond may be canceled on a undisturbed area.

SECTION 800.21

COLLATERAL BONDS

12-05-97

- (a) Collateral bonds, except for letters of credit, cash accounts, and real property, shall be subject to the following conditions'
 - (1) The Division shall keep custody of collateral deposited by the applicant until authorized for release or replacement as provided in this Subchapter.
 - (2) The Director shall value collateral at its current market value, not at face value.
 - (3) The director shall require that certificates of deposit be made payable to or assigned to the Division, both in writing and upon the records of the bank issuing the certificates. If assigned, the Director shall require the banks, issuing these certificates to waive all rights of setoff or liens against those certificates.
 - (4) The Director shall not accept an individual certificate of deposit in an amount in excess of \$100,000 or the maximum insurable amount as determined by the Federal deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.
- (b) Letters of credit shall be subject to the following conditions;
 - (1) The letter may be issued only by a bank organized or authorized to do business in the United States;
 - (2) Letters of credit shall be irrevocable during their terms. A letter of credit used as security in areas requiring continuous bond coverage shall be forfeited and shall be collected by the Division if not replaced by other suitable bond or letter of credit at least 30 days before its expiration date.
 - (3) The letter of credit shall be payable to the Division upon demand, in part or in full, upon receipt from the Director of a notice of forfeiture issued in accordance with Section 800.50.
- (c) Real property posted as a collateral bond shall meet the following conditions:
 - (1) The applicant shall grant the Division a first mortgage, first deed of trust, or perfected first-lien security interest in real property with a right to sell or otherwise dispose of the property in the event of forfeiture under Section 800.50.

- (2) In order for the Director to evaluate the adequacy of the real property offered to satisfy collateral requirements, the applicant shall submit a schedule of the real property which shall be mortgaged or pledged to secure the obligations under the indemnity agreement. The list shall include –
 - (i) A description of the property;
 - (ii) The fair market value as determined by an independent appraisal conducted by a certified appraiser; and
 - (iii) Proof of possession and title to the real property.
- (3) The property may include land which is part of the permit area; however, land pledged as collateral for a bond under this Section shall not be disturbed under any permit while it is serving as security under this Section.
- (d) Cash accounts shall be subject to the following conditions:
 - (1) The Director may authorize the operator to supplement the bond through the establishment of a cash account in one or more federally-insured or equivalently protected accounts made payable upon demand to, or deposited directly with, the Division. The total bond including the cash account shall not be less than the amount required under terms of performance bonds including any adjustment, less amounts released in accordance with Section 800.40.
 - (2) Any interest paid on a cash account shall be retained in the account and applied to the bond value of the account unless the Director has approved the payment of interest to the operator.
 - (3) Certificates of deposit may be substituted for a cash account with the approval of the Director.
 - (4) The Director shall not accept an individual cash account in an amount in excess of \$100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.
- (e)
 - (1) The estimated bond value of all collateral posted as assurance under this Section shall be subject to a margin which is the ratio of bond value to market value, as determined by the Director. The margin shall reflect legal and liquidation fees, as well as value depreciation, marketability and fluctuations which might affect the net cash available to the Division to complete reclamation.

- (2) The bond value of collateral may be evaluated at any time, but it shall be evaluated as part of permit renewal and, if necessary, the performance bond amount increased or decreased. In no case shall the bond value of collateral exceed the market value.
- (f) Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing to the Director at the time collateral is offered.

SECTION 800.23 SELF-BONDING

12-05-97

- (a) Definitions. For the purposes of this Section only:

Current assets means cash or other assets or resources which are reasonably expected to be converted to cash or sold or consumed within one (1) year or within the normal operating cycle of the business.

Current liabilities means obligations which are reasonable expected to be paid or liquidated within one (1) year or within the normal operating cycle of the business.

Fixed assets means plants and equipment, but does not include land or coal in place.

Liabilities means obligations to transfer assets or provide services to other entities in the future as a result of past transactions.

Net worth means total assets minus total liabilities and is equivalent to owners' equity.

Parent corporation means a corporation which owns or controls the applicant.

Tangible net worth means net worth minus intangibles such as goodwill and rights to patents or royalties.

- (b) The Director may accept a self-bond from an applicant for a permit if all of the following conditions are met by the applicant or its parent corporation guarantor:
 - (1) The applicant designates a suitable agent to receive service of process in the state of Arkansas.
 - (2) The applicant has been in continuous operation as a business entity for a period of not less than five (5) years. Continuous operation shall mean that business was conducted over a period of five (5) years immediately preceding the time of application.

- (i) The Director may allow a joint venture or syndicate with less than five (5) years of continuous operation to qualify under this requirement, if each member of the joint venture or syndicate has been in continuous operations for at least five (5) years immediately preceding the time of application.
 - (ii) When calculating the period of continuous operation, the Director may exclude past periods of interruption to the operation of the business entity that were beyond the applicant's control and that do not affect the applicant's likelihood of remaining in business during the proposed surface coal mining and reclamation operations.
- (3) The applicant submits financial information in sufficient detail to show that the applicant meets one of the following criteria:
 - (i) The applicant has a current rating for its most recent bond issuance of "A" or higher as issued by either Moody's Investor Service or Standard and Poor's Corporation:
 - (ii) The applicant has a tangible net worth of at least \$10 million, a ratio of total liabilities to net worth of 2.5 times or less, and a ratio of current assets to current liabilities of 1.2 times or greater; or
 - (iii) The applicant's fixed assets in the United States total at least \$20 million, and the applicant has a ratio of total liabilities to net worth of 2.5 times or less, and a ratio of current assets to current liabilities of 1.2 times or greater.
- (4) The applicant submits--
 - (i) Financial statement for the most recently completed fiscal year accompanied by a report prepared by an independent certified public accountant in conformity with generally accepted accounting principles and containing the accountant's audit opinion or review opinion of the financial statements with no adverse opinion;
 - (ii) Unaudited financial statements for completed quarters in the current fiscal year; and
 - (iii) Additional unaudited information as requested by the Director.

(c)

(1) The Director may accept a written guarantee for an applicant's self-bond from a parent corporation guarantor, if the guarantor meets the conditions of Paragraphs (b)(1)-(b)(4) of this Section as if it were the applicant. Such a written guarantee shall be referred to as a "corporate guarantee." The terms of the corporate guarantee shall provide for the following:

- (i) If the applicant fails to complete the reclamation plan, the guarantor shall do so or the guarantor shall be liable under the indemnity agreement to provide funds to the Division sufficient to complete the reclamation plan, but not to exceed the bond amount.
- (ii) The corporate guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the applicant and to the Director at least 90 days in advance of the cancellation date, and the Director accepts the cancellation.
- (iii) The cancellation may be accepted by the Director if the applicant obtains suitable replacement bond before the cancellation date or if the lands for which the self-bond, or portion thereof, was accepted have not been disturbed.

(2) The Director may accept a written guarantee for an applicant's self-bond from any corporate guarantor, whenever the applicant meets the conditions of paragraphs (b)(1), (b)(2) and (b)(4) of this section, and the guarantor meets the conditions of paragraphs (b)(1) through (b)(4) of this section. Such a written guarantee shall be referred to as a "non-parent corporate guarantee." The terms of this guarantee shall provide for compliance with the conditions of paragraph (c)(1)(i) through (c)(1)(iii) of this section. The Director may require the applicant to submit any information specified in paragraph (b)(3) of this section in order to determine the financial capabilities of the applicant.

(d) For the Director to accept an applicant's self-bond, the total amount of the outstanding and proposed self-bonds of the applicant for surface coal mining and reclamation operations shall not exceed 25 percent of the applicant's tangible net worth in the United States. For the Director to accept a corporate guarantee, the total amount of the parent corporation guarantor's present and proposed self-bonds and guaranteed self-bonds for surface coal mining and reclamation operations shall not exceed 25 percent of the guarantor's tangible net worth in the United States. For the Director to accept a non-parent corporate guarantee, the total amount of the non-parent corporate guarantor's present and proposed self-bonds and guaranteed self-bonds shall not exceed 25 percent of the guarantor's tangible net worth in the United States.

- (e) If the Director accepts an applicant's self-bond, an indemnity agreement shall be submitted subject to the following requirements:
- (1) The indemnity agreement shall be executed by all persons and parties who are to be bound by it, including the parent corporation guarantor, and shall bind each jointly and severally.
 - (2) Corporations applying for a self-bond, and parent and non-parent corporations guaranteeing an applicant's self-bond shall submit an indemnity agreement signed by two corporate officers who are authorized to bind their corporations. A copy of such authorization shall be provided to the Director along with an affidavit certifying that such an agreement is valid under all applicants Federal and state laws. In addition, the guarantor shall provide a copy of the corporate authorization demonstrating that the corporation may guarantee the self-bond and execute the indemnity agreement.
 - (3) If the applicant is a partnership, joint venture, or syndicate, the agreement shall bind each partner or party who has a beneficial interest, directly or indirectly, in the applicant.
 - (4) Pursuant to Section 800.50, the applicant, parent or non-parent corporate guarantor shall be required to complete the approved reclamation plan for the lands in default or to pay to the Division an amount necessary to complete the approved reclamation plan, not to exceed the bond amount. If permitted under state law, the indemnity agreement which under forfeiture shall operate as a judgment against those parties liable under the indemnity agreement.
- (f) The director may require self-bonded applicants, parent and non-parent corporate guarantors to submit an update of the information required under paragraphs (b)(3) and (b)(4) of this section within 90 days after the close of each fiscal year following the issuance of the self-bond or corporate guarantee.
- (g) If at any time during the period when a self-bond is posted, the financial conditions of the applicant, parent, or non-parent corporate guarantor change so that the criteria of paragraphs (b)(3) and (d) of this section are not satisfied, the permittee shall notify the Director immediately and shall within 90 days post an alternate form of bond in the same amount as the self-bond. Should the permittee fail to post an adequate substitute bond, the provision of Section 800.16(e) shall apply.

SECTION 800.30

REPLACEMENT OF BONDS

12-05-97

- (a) The director may allow a permittee to replace existing bonds with other bonds that provide equivalent coverage.
- (b) The Director shall not release existing performance bonds until the permittee has submitted, and the Director has approved, acceptable replacement performance bonds. Replacement of performance bond pursuant to this Section shall not constitute a release of bond under Section 800.40.

SECTION 800.40

REQUIREMENT TO RELEASE PERFORMANCE BONDS

12-05-97

- (a) Bond release application.
 - (1) The permittee may file an application with the Director for the release of all or part of a performance bond. Applications may be filed only at times or during seasons authorized by the Director in order to properly evaluate the completed reclamation operations. The times or seasons appropriate for the evaluation of certain types of reclamation shall be identified in the mining and reclamation plan required in Subchapter G of this Chapter and approved by the Director.
 - (2) Within 30 days after an application for bond release has been filed with the Director, the permittee shall submit a copy of an advertisement placed at least once a week for four successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. The advertisement shall be considered part of any bond release application shall contain the permittee's name, permit number and approval date, notification of the precise location of the land affected, the number of acres, the type and amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, a description of the results achieved as they relate to the permittee's approved reclamation plan, and the name and address of the Division to which written comments, objections, or requests for public hearings and informal conferences on the specific bond release may be submitted pursuant to Section 800.40(f) and(h). In addition, as part of any bond release application, the permittee shall submit copies of letters which he or she has send to adjoining property owners, local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the surface coal mining and reclamation operation too place, notifying them of the intention to seek release from the bond.
 - (3) The permittee shall include in the application for bond release a notarized

statement which certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of the Act, the regulatory program, and the approved reclamation plan. Such certification shall be submitted for each application or phase of bond release.

(b) Inspection by Reclamation Review Committee.

- (1) Upon receipt of the bond release application, the Director shall, within 30 days, or as soon thereafter as weather conditions permit, conduct an inspection and evaluation of the reclamation work involved. The Reclamation Review Committee shall be given notice of the filing of the application for bond release and the date for the inspection. To the extent feasible, the Director shall arrange the inspection at a date that is convenient to the members of the Reclamation Review Committee.
- (2) The Reclamation Review Committee shall comprise a representative of each of the following:
 - (i) The Arkansas Geological Commission,
 - (ii) The Arkansas Game and Fish Commission,
 - (iii) The Arkansas Forestry Commission,
 - (iv) The Arkansas Soil and Water Conservation Commission.
 - (v) The surface owner, agent, or lessee shall be given notice of such inspection and may participate with the Reclamation Review Committee in making the bond release inspection. The Director may arrange with the permittee to allow access to the permit area, upon request by any person with an interest in bond release, for the purpose of gathering information relevant to the proceeding.
- (3) The evaluation shall consider, among other factors, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of future occurrence of such pollution, the estimated cost of abating such pollution, and the comments received from the Reclamation Review Committee and other persons.
- (4) Within 60 days from the filing of the bond release application, if no public hearing is held pursuant to Paragraph (f) of this Section, or within 30 days after a public hearing has been held pursuant to Paragraph (f) of this Section, the Director shall notify in writing the permittee, the surety, or other persons with an interest in bond collateral who have requested notification under Section

800.21(f), and the persons who either filed objections in writing or objectors who were a party to the hearing proceedings, if any, of his or her decision to release or not to release all or part of the performance bond.

- (c) The Director may release all or part of the bond for the entire permit area or incremental area if the Reclamation Review Committee is satisfied that all the reclamation or a phase of the reclamation covered by the bond or portion thereof has been accomplished in accordance with the following schedules for reclamation of Phases I, II, and III:
 - (1) At the completion of Phase I, after the operator completes the backfilling, regrading, replacement of topsoil, and drainage control of a bonded area in accordance with the approved reclamation plan, 60 percent of the bond or collateral for the applicable area.
 - (2) At the completion of Phase II, after revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan, an additional amount of bond. When determining the amount of bond to be released after successful revegetation has been established, the Director shall retain that amount of bond for the revegetated area which would be sufficient to cover the cost of reestablishing revegetation if completed by a third party and for the period specified for operator responsibility in Section 816.116 of this Chapter for establishing revegetation. No part of the bond or deposit shall be released under this Paragraph so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by the Act and by Subchapter K of this Chapter or until soil productivity for prime farmland has returned to the equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to the Act and Part 823 of this Chapter. Where a silt dam is to be retained as a permanent impoundment pursuant to Subchapter K of this Chapter, the Phase II portion of the bond may be released under this Paragraph so long as provision for sound future maintenance by the operator or the landowner have been made with the Director.
 - (3) At the completion of Phase II, after the operator has completed successfully all surface coal mining and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the period specified for operator responsibility in Section 816.116 of this Chapter. However, no bond shall be fully released under provisions of this Section until the reclamation requirements of the Act and the permit are fully met.
- (d) If the Director disapproves the application for release of the bond or portion thereof, the Director shall notify the permittee, the surety, and any person with an interest in collateral as provided for in Section 800.21(f), in writing, stating the reasons for disapproval and

recommending corrective actions necessary to secure the release and allowing an opportunity for a public hearing.

- (e) When any application for total or partial bond release is filed with the Director, the Director shall notify the municipality in which the surface coal mining operation is located by certified mail at least 30 days prior to the release of all or portion of the bond.
- (f) Any person with a valid legal interest which might be adversely affected by release of the bond, or the responsible officer or head of any Federal, state or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social or economic impact involved in the operation or which is authorized to develop and enforce environmental standard with respect to such operating, shall have the right to file written objections to the proposed release from bond with the Director within 30 days after the last publication of the notice required by Paragraph 800.40(a)(2) of this Section. If written objections are filed and a hearing is requested, the Commission shall inform all the interested parties of the time and place of the hearing, and shall hold a public hearing within 30 days after receipt of the request for the hearing. The date, time, and location of the public hearing shall be advertised by the Commission in a newspaper of general circulation in the locality for two (2) consecutive weeks. The public hearing shall be held in the locality of the surface coal mining operation from which bond release is sought or at the Central Office, at the option of the objector.
- (g) For the purpose of the hearing under Paragraph (f) of this Section, the Commission shall have the authority to administer oaths, subpoena witnesses or written or printed material, compel the attendance of witnesses or the production of materials, and take evidence including, but not limited to, inspection of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing shall be made, and a transcript shall be made available on the motion of any party or by order of the Commission.
- (h) Without prejudice to the right of an objector or the applicant, the Director may hold an informal conference as provided in Section 29(a) of the Act to resolve such written objections. The Director shall make a record of the informal conference unless waived by all parties, which shall be accessible to all parties. The Director shall also furnish all parties of the informal conference with a written finding of the Director based on the informal conference, and the reasons for said finding.

SECTION 800.50

FORFEITURE OF BONDS

12-05-97

- (a) If an operator refuses or is unable to conduct reclamation of an unabated violation, if the terms of the permit are not met, or if the operator defaults on the conditions under which

the bond was accepted, the Director shall take the following action to forfeit all or part of a bond or bonds for any permit area or an increment of a permit area:

- (1) Send written notification by certified mail, return receipt requested, to the permittee and the surety on the bond, if any, informing them of the determination to forfeit all or part of the bond, including the reason for the forfeiture and the amount to be forfeited. The amount shall be based on the estimated total cost of achieving the reclamation plan requirements.
 - (2) Advise the permittee and surety, if applicable, of the conditions under which forfeiture may be avoided. Such conditions may include, but are not limited to--
 - (i) Agreement by the permittee or another party to perform reclamation operations in accordance with a compliance schedule which meets the conditions of the permit, the reclamation plan, and the regulatory program and a demonstration that such party has the ability to satisfy the conditions; or
 - (ii) The Director may allow a surety to complete the reclamation plan, or the portion of the reclamation plan applicable to the bonded phase or increment, if the surety can demonstrate an ability to complete the reclamation in accordance with the approved reclamation plan. Except where the Director may approved partial release authorized under Section 800.40, no surety liability shall be released until successful completion of all reclamation under the terms of the permit, including the applicable liability periods of Section 800.13.
- (b) In the event forfeiture of the bond is required by this Section, the Director shall--
- (1) Proceed to collect the forfeited amount as provided by applicable laws for the collection of defaulted bonds or other debts if actions to avoid forfeiture have not been taken, or if rights of appeal, if any, have not been exercised within a time established by the Director, or if such appeal, if taken, is unsuccessful.
 - (2) Use funds collected from bond forfeiture to complete the reclamation plan, or portion thereof, on the permit area or increment, to which bond coverage applies.
- (c) Upon default, the Director may cause the forfeiture of any and all bonds deposited to complete reclamation for which the bonds were posted. Unless specifically limited, as provided in Section 800.11(b), bond liability shall extend to the entire permit area under conditions of forfeiture.

(d)

- (1) In the event the estimated amount forfeited is insufficient to pay for the full cost of reclamation, the operator shall be liable for remaining costs. The Division may complete, or authorize completion of, reclamation of the bonded area and may recover from the operator all costs of reclamation in excess of the amount forfeited.
- (2) In the event the amount of performance bonds forfeited was more than the amount necessary to complete reclamation, the unused funds shall be returned by the Director to the party from whom they were collected.

SECTION 800.60

TERMS AND CONDITIONS FOR LIABILITY INSURANCE

12-05-97

- (a) The Director shall require the applicant to submit as part of its permit application a certificate issued by an insurance company authorized to do business in the United States certifying that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operations for which the permit is sought. Such policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons injured or property damaged as a result of the surface coal mining and reclamation operations, including the use of explosives, and who are entitled to compensation under the applicable provision of state law. Minimum insurance coverage for bodily injury and property damage shall be \$300,000 for each occurrence and \$500,000 aggregate.
- (b) The policy shall be maintained in full force during the life of the permit or any renewal thereof and the liability period necessary to complete all reclamation operations under this Chapter.
- (c) The policy shall include a rider requiring that the insurer notify the Director whenever substantive changes are made in the policy including any termination or failure to renew.
- (d) The Director may accept from the applicant, in lieu of a certificate for a public liability insurance policy, satisfactory evidence from the applicant that it satisfies applicable state self-insurance requirements approved as part of the regulatory program and the requirements of this Section.

SUBCHAPTER K -- STATE PROGRAM PERFORMANCE STANDARDS

PART 810 -- STATE PROGRAM PERFORMANCE STANDARDS GENERAL PROVISIONS

SECTION

810.1	Scope
810.2	Objective
810.4	Responsibility
810.11	Applicability

SECTION 810.1 SCOPE

5-29-80

This Subchapter sets forth the minimum performance standards and design requirements to be adopted and implemented under the State program for coal exploration and surface coal mining and reclamation operations.

SECTION 810.2 OBJECTIVE

5-29-80

The objective of this Subchapter is to ensure that coal exploration and surface coal mining and reclamation operations are conducted in manners which are compatible with the environmental, social, and esthetic needs of the Nation. Accordingly, the performance standards and design requirements in this Subchapter will provide for

- (a) Protection of the health, safety, and general welfare of mine workers and the public;
- (b) Maximum use and conservation of the solid fuel resource being recovered so that re-affecting the land through future surface coal mining operations can be minimized;
- (c) Prompt reclamation of all affected areas to conditions that are capable of supporting the premining land uses or higher or better land uses;
- (d) Reclamation of land affected by surface coal mining operations as contemporaneously as practicable with mining operations;

- (e) Minimizing, to the extent possible using the best technology currently available, disturbances and adverse impacts on fish, wildlife, and other related environmental values, and enhancement of such resources where practicable;
- (f) Revegetation which achieves a prompt vegetative cover and recovery of productivity levels compatible with approved land uses;
- (g) Minimum disturbance to the prevailing hydrologic balance at the mine site and in associated off-site areas, and to the quality and quantity of water in surface and ground water systems;
- (h) Protection of fragile and historic lands where surface coal mining operations could result in significant damage to important historic, cultural, scientific, or esthetic values and natural systems;
- (i) Confinement of surface coal mining and reclamation operations including, but not limited to, the location of spoil disposal areas to lands within the permit area; and
- (j) Striking a balance between protection of the environment and agricultural productivity and the Nation's need for coal as an essential source of energy.
- (k) Protection of endangered and threatened species and their critical habitats as determined by the Endangered Species Act of 1973 (16 USC 1531, et seq.).

SECTION 810.4 RESPONSIBILITY

5-29-80

- (a) The Director shall ensure that the performance standards and design requirements of this Subchapter are implemented and enforced under the State program.
- (b) Each person conducting coal exploration or surface coal mining and reclamation operations is responsible for complying with the applicable performance standards and design requirements in this Subchapter and the State program.

SECTION 810.11 APPLICABILITY

10-29-92

Part 815 applies to all coal exploration conducted under the State program. Part 816 applies to all surface and underground mining activities conducted under the State program. When all or part of the rule appears in brackets, it is meant to apply only to underground mining activities, and when all or part of a rule is in parentheses, it applies only to surface mining activities. Parts 818 through 828 apply to certain special categories of surface coal mining and reclamation activities.

Part 816 applies to each of those special categories of operations, except to the extent that a provision of Part 818 through 828 specifically exempts a particular category from a particular requirement of Part 816.

PART 815 -- STATE PROGRAM PERFORMANCE STANDARDS -- COAL
EXPLORATION

SECTION

815.1	Scope
815.2	Objectives
815.11	General Responsibility of Persons Conducting Coal Exploration
815.13	Required Documents
815.15	Performance Standards for Coal Exploration
815.17	Requirement for a Permit

SECTION 815.1 SCOPE

5-29-80

This Part sets forth performance standards and design requirements required for coal exploration which substantially disturbs the natural land surface or surface coal mining and reclamation operations affecting two acres or less. These performance standards and design requirements are the minimum standards which shall be required of such exploration or operations and such exploration or operations may, at the discretion of the Director, be further required to comply with the applicable performance standards and design requirements of Parts 816 through 828.

SECTION 815.2 OBJECTIVES

10-29-92

The objectives of this Part are to –

- (a) Provide any person who conducts or intends to conduct coal exploration which substantially disturbs the natural land surface with environmental protection performance standards and design requirements under the State program; and
- (b) RESERVED
- (c) Prevent degradation of environmental quality during and following the conduct of coal exploration.

SECTION 815.11

GENERAL RESPONSIBILITY OF PERSONS CONDUCTING COAL EXPLORATION

10-29-92

- (a) Each person who conducts coal exploration which substantially disturbs the natural land surface and in which 250 tons or less of coal are removed shall file the notice of intention to explore required under Section 776.12 and shall comply with Section 815.15 of this Part.
- (b) Each person who conducts coal exploration which substantially disturbs the natural land surface and in which more than 250 tons of coal are removed in the area described by the written approval from the Director, shall comply with the procedures described in the exploration and reclamation operations plan approved under Section 776.13 and shall comply with Section 815.15 of this Part.

SECTION 815.13

REQUIRED DOCUMENTS

5-29-80

Each person who conducts coal exploration which substantially disturbs the natural land surface and which removes more than 250 tons of coal shall, while in the exploration area, possess written approval of the Director for the activities granted under Section 776.12. The written approval shall be available for review by the authorized representative of the Director upon request.

SECTION 815.15

PERFORMANCE STANDARDS FOR COAL EXPLORATION

5-27-99

The performance standards in this Section are applicable to coal exploration which substantially disturbs land surface.

- (a) Habitats of unique or unusually high value for fish, wildlife, and other related environmental values and areas identified in Sections 780.16 (b) shall not be disturbed during coal exploration.
- (b) The person who conducts coal exploration shall, to the extent practicable, measure important environmental characteristics of the exploration area during the operations, to minimize environmental damage to the area and to provide supportive information for any permit application that the person may submit under Subchapter G.
- (c)
 - (1) Vehicular traffic on other than established graded and surfaced roads shall be limited by the person who conducts coal exploration to that absolutely necessary to conduct the exploration. Travel shall be confined to graded and surfaced roads

during periods when excessive damage to vegetation or rutting of the land surface could result.

- (2) Any new road in the exploration or mining operations area which is used less than six (6) months shall comply with the provisions of Section 816.150(b) through (f). If the road will be used longer than six (6) months, it shall comply with the provisions of Sections 816.150(b) through (f) and 816.151.
- (3) Existing roads may be used for exploration in accordance with the following:
 - (i) All applicable Federal, State, and local requirements shall be met.
 - (ii) If the road is significantly altered for exploration, including, but not limited to, change of grade, widening, or change of route, or if use of the road for exploration contributes additional suspended solids to stream flow or runoff, then Paragraph (g) of this Section and Section 816.150(b) through (f) shall apply to all areas of the road which are altered or which result in such additional contributions.
 - (iii) If the road is significantly altered for exploration and will remain as a permanent road after such activities are completed, the person conducting exploration shall ensure that the requirements of Sections 816-150(b) through (f) and 816.151, as appropriate, are met for the design, construction, alteration, and maintenance of the road.
- (4) Promptly after exploration activities is completed, existing roads used during exploration shall be reclaimed either--
 - (i) To a condition equal to or better than their pre-exploration condition; or
 - (ii) To the condition required for permanent roads under Sections 816.150(b) through (f) and 816.151, as appropriate.
- (d) If excavations, artificial flat areas, or embankments are created during exploration these areas shall be returned to the approximate original contour promptly after such features are no longer needed for coal exploration.
- (e) Topsoil shall be removed, stored, and redistributed on disturbed areas as necessary to assure successful revegetation or as required by the Director.
- (f) Revegetation of areas disturbed by coal exploration shall be performed by the person who conducts the exploration, or his or her agent. If more than 250 tons of coal are removed from the exploration area, all revegetation shall be in compliance with the plan approved by the Director and carried out in a manner that encourages prompt vegetative cover and

recovery of productivity levels compatible with approved post exploration land use and in accordance with the following:

- (1) All disturbed lands shall be seeded or planted to the same seasonal variety native to the disturbed area. If both the pre-exploration and post exploration land uses are intensive agriculture, planting of the crops normally grown will meet the requirements of this paragraph.
 - (2) The vegetative cover shall be capable of stabilizing the soil surface in regards to erosion.
- (g) With the exception of small and temporary diversions of overland flow of water around new roads, drill pads, and support facilities, no ephemeral, intermittent or perennial stream shall be diverted during coal exploration activities. Overland flow of water shall be diverted in a manner that--
- (1) Prevents erosion;
 - (2) To the extent possible using the best technology currently available, prevents additional contributions of suspended solids to streamflow or runoff outside the exploration area; and
 - (3) Complies with all other applicable State or Federal requirements.
- (h) Each exploration hole, borehole, well, or other exposed underground opening created during exploration must meet the requirements of Sections 816.13, 816.14, and 816.15.
- (i) All facilities and equipment shall be removed from the exploration area promptly when they are no longer needed for exploration, except for those facilities and equipment that the Director determines may remain to--
- (1) Provide additional environmental quality data;
 - (2) Reduce or control the on- and off-site effects of the exploration activities; or
 - (3) Facilitate future surface mining and reclamation operations by the person conducting the exploration, under an approved permit.
- (j) Coal exploration shall be conducted in a manner which minimizes disturbance of the prevailing hydrologic balance, and shall include sediment control measures such as those listed in Section 816.45 or sedimentation ponds which comply with Section 816.46. The Director may specify additional measures which shall be adopted by the person engaged in coal exploration.

- (k) Toxic- or acid-forming materials shall be handled and disposed of in accordance with Section 816.48 and 816.102(f). If specified by the Director, additional measures shall be adopted by the person engaged in coal exploration.

SECTION 815.17 REQUIREMENT FOR A PERMIT

10-29-92

- (a) Except as provided under Sections 815.17(b) and 700.10(a)(5), any person who intends to commercially use or sell coal extracted during coal exploration operations under an exploration permit, shall first obtain a permit to conduct surface coal mining operations for those operations from the Director under Subchapter G.
- (b) With the prior written approval of the Director, no permit to conduct surface coal mining operations is required for the sale or commercial use of coal extracted during exploration operations if such sale or commercial use is for coal testing purposes only. The person conducting the exploration shall file an application for such approval with the Division. The application shall demonstrate that the coal testing is necessary for the development of a surface coal mining and reclamation operation for which a surface coal mining operations permit application is to be submitted in the near future, and that the proposed commercial use or sale of coal extracted during exploration operations is solely for the purpose of testing the coal. The application shall contain the following:
 - (1) The name of the testing firm and the locations at which the coal will be tested.
 - (2) If the coal will be sold directly to, or commercially used directly by, the intended end user, a statement from the intended end user; or, if the coal is sold indirectly to the intended end user through an agent or broker, a statement from the agent or broker. The statement shall include:
 - (i) The specific reason for the test, including why the coal may be so different from the intended user's other coal supplies as to require testing;
 - (ii) The amount of coal necessary for the test and why a lesser amount is not sufficient; and
 - (iii) A description of the specific tests that will be conducted.
 - (3) Evidence that sufficient reserves of coal are available to the person conducting exploration or its principals for future commercial use or sale to the intended end user, or agent or broker of such user identified above, to demonstrate that the amount of coal to be removed is not the total reserve, but is a sampling of a larger reserve.

- (4) An explanation as to why other means of exploration, such as core drilling, are not adequate to determine the quality of the coal and/or the feasibility of developing a surface coal mining operation.

PART 816 -- PERMANENT PROGRAM PERFORMANCE STANDARDS

(SURFACE MINING ACTIVITIES) – When part of a rule is enclosed in parentheses, the portion applies to surface mining activities only. If the number of the rule is followed by a -S and the entire rule is enclosed by parentheses, the entire rule applies to surface mining activities only.

[UNDERGROUND MINING ACTIVITIES] – When part of a rule is enclosed in brackets, that portion applies to underground mining activities only. If the number of the rule is followed by a -U and the entire rule is enclosed by brackets, the entire rule applies to underground activities only.

In most instances the rule is equally applicable to surface mining activities and underground mining activities. In these instances, read the rule with the appropriate parenthetical or bracketed language; ie., read the parenthesis and ignore the brackets if you are engaged in surface operations; read brackets but ignore parenthesis if you are engaged in underground operations.

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SECTION 816.1 SCOPE

5-29-80

This part sets forth the minimum environmental protection performance standards to be adopted and implemented under the State program for (surface mining activities) [*underground mining activities*].

SECTION 816.2 OBJECTIVES

5-29-80

This Part is intended to ensure that all (surface mining activities) [*underground mining activities*] are conducted in a manner which preserves and enhances environmental and other values in accordance with the Act.

SECTION 816.11 SIGNS AND MARKERS

5-27-99

- (a) Specifications. Signs and markers required under this Part shall –
 - (1) Be posted, maintained, and removed by the person who conducts the (surface mining activities) [*underground mining activities*],
 - (2) Be of a uniform design throughout the operation that can be easily seen and read;
 - (3) Be made of durable material; and
 - (4) Conform to local ordinances and codes.
- (b) Duration of maintenance. Signs and markers shall be maintained during the conduct of all activities to which they pertain.
- (c) Mine and permit identification signs.

- (1) Identification signs shall be displayed at each point of access to the (permit area) *[areas of surface operations and facilities on permit areas for underground mining activities]* from public roads.
 - (2) Signs shall show the name, business address, and telephone number of the person who conducts the (surface mining activities) *[underground mining activities]* and the identification number of the current permit authorizing (surface mining activities) *[underground mining activities]*.
 - (3) Signs shall be retained and maintained until after the release of all bonds for the permit area.
- (d) Perimeter markers. The perimeter of a (permit area) *[areas affected by surface operations or facilities]* shall be clearly marked before the beginning of (surface mining activities) *[underground mining activity]*.
- (e) Buffer zone markers. Buffer zones shall be clearly marked along their boundaries as required under Section 816.57.
- (f) Blasting signs. If blasting is conducted incident to (surface mining activities) *[underground mining activities]* the person who conducts these activities shall:
- (1) Conspicuously display signs reading "Blasting Area" along the edge of any blasting area that comes within 50 feet of any road within the permit area, or within 100 feet of any public road right of way.
 - (2) Conspicuously flag, or post within the blasting area, the immediate vicinity of charged holes as required by Section 816.65(e).
 - (3) Place at all entrances to the (surface mining activities) *[underground mining activities]* from public roads or or highways conspicuous signs which state "WARNING! EXPLOSIVES IN USE", which clearly explain the blast warning and all clear signals that are in use and which explain the marking of blast areas and charged holes within the permit area.
- (g) Topsoil markers. Where topsoil or other vegetation-supporting material is segregated and stockpiled as required under Section 816.22, the stockpiled material shall be clearly marked.

SECTION 816.13

CASING AND SEALING OF (DRILLED HOLES) [EXPOSED UNDERGROUND OPENINGS]: GENERAL REQUIREMENTS

10-29-92

Each exploration hole, other drill or borehole, *[shaft]*, well, or other exposed underground opening shall be cased *[lined]*, (sealed), or otherwise managed, as approved by the Director, to prevent acid or other toxic drainage from entering ground or other surface waters, to minimize disturbance to the prevailing hydrologic balance, and to ensure the safety of people, livestock, fish and wildlife, and machinery in the permit and adjacent area. (If these openings are uncovered or exposed by surface mining activities within the permit area they shall be permanently closed, unless approved for water monitoring, or otherwise managed in a manner approved by the Director.) *[Each exploration hole, drill hole or borehole or well that is uncovered or exposed by underground mining activities within the permit area shall be permanently closed, unless approved for water monitoring or otherwise managed in a manner approved by the Director.]* Use of a drilled hole or borehole or monitoring well as a water well must meet the provisions of Section 816.53 of this Part. This Section does not apply to holes solely drilled and use for blasting *[in the area affected by surface operations]*.

SECTION 816.14-S

CASING AND SEALING OF DRILLED HOLES:
TEMPORARY

5-29-80

(Each exploration hole, other drill or boreholes, wells and other exposed underground openings which have been identified in the approved permit application for use to return coal processing waste or water to underground workings, or to be used to monitor groundwater conditions, shall be temporarily sealed before use and protected during use by barricades, or fences, or other protective devices approved by the Director. These devices shall be periodically inspected and maintained in good operating condition by the person who conducts the surface mining activities.)

SECTION 816.14-U

CASING AND SEALING OF DRILLED HOLES:
TEMPORARY

5-29-80

- (a) *[Each mine entry which is temporarily inactive, but has a further projected useful service under the approved permit application, shall be protected by barricades or other covering devices, fenced, and posted with signs, to prevent access into the entry and to identify the hazardous nature of the opening. These devices shall be periodically inspected and maintained in good operating conditions by the person who conducts the underground mining activities.]*
- (b) *Each exploration hole, other drill hole or borehole, shaft, well, and other exposed underground opening which has been identified in the approved permit application for use to return underground development waste, coal processing waste or water to underground*

workings, or to be used to monitor groundwater conditions, shall be temporarily sealed until actual use.]

SECTION 816.15 CASING AND SEALING OF (DRILLED HOLES)
[UNDERGROUND OPENINGS]: PERMANENT

5-29-80

When no longer needed for monitoring or other use approved by the Director upon a finding of no adverse environmental or health and safety effects, or unless approved for transfer as a water well under Section 816.53, each [*shaft, drift, adit, tunnel*] exploration hole, other drilled hole or borehole, well, and other exposed underground opening shall be capped, sealed, backfilled, or otherwise properly managed, as required by the Director, in accordance with Sections 816.13 [*and 816.50*] and consistent designed to prevent access to the mine workings by people, livestock, fish and wildlife, and machinery, and to keep acid or other toxic drainage from entering ground or surface waters.

SECTION 816.22 TOPSOIL AND SUBSOIL

5-27-99

(a) Removal.

- (1) (i) All topsoil shall be removed as a separate layer from the area to be disturbed, and segregated.
- (ii) Where the topsoil is of insufficient quantity or poor quality for sustaining vegetation, the materials approved by the Director in accordance with Paragraph (b) of this Section shall be removed as a separate layer from the area to be disturbed, and segregated.
- (2) If topsoil is less than 6 inches thick, the operator may remove the topsoil and the unconsolidated materials immediately below the topsoil and treat the mixture as topsoil.
- (3) The Director may choose not to require the removal of topsoil for minor disturbances which--
 - (i) Occur at the site of small structures, such as power poles, signs, or fence lines; or
 - (ii) Will not destroy the existing vegetation and will not cause erosion.

- (4) Timing. All material to be removed under this Section shall be removed after the vegetative cover that would interfere with its salvage is cleared from the area to be disturbed, but before any drilling, blasting, mining, or other surface disturbance takes place.
- (b) Substitutes and supplements. Selected overburden materials may be substituted for, or used as a supplement to topsoil if the operator demonstrates to the Director that the resulting soil medium is equal to, or more suitable for sustaining vegetation than, the existing topsoil, and the resulting soil medium is the best available in the permit area to support revegetation.
- (c) Storage.
 - (1) Materials removed under Paragraph (a) of this Section shall be segregated and stockpiled when it is impractical to redistribute such materials promptly on regraded areas.
 - (2) Stockpiled materials shall--
 - (i) Be selectively placed on a stable site within the permit area;
 - (ii) Be protected from contaminants and unnecessary compaction that would interfere with revegetation;
 - (iii) Be protected from wind and water erosion through prompt establishment and maintenance of an effective, quick growing vegetative cover or through other measures approved by the Director; and
 - (iv) Not be moved until required for redistribution unless approved by the Director.
 - (3) Where long-term surface disturbances will result from facilities such as support facilities and preparation plants and where stockpiling of materials removed under Paragraph (a)(1) of this Section would be detrimental to the quality or quantity of those materials, the Director may approve the temporary distribution of the soil materials so removed to an approved site within the permit area to enhance the current use of that site until needed for later reclamation, provided that--
 - (i) Such action will not permanently diminish the capability of the topsoil of the host site; and
 - (ii) The material will be retained in a condition more suitable for redistribution than if stockpiled.

(d) Redistribution.

- (1) Topsoil materials removed under Paragraph (a) of this Section shall be redistributed in a manner that--
 - (i) Achieves an approximately uniform, stable thickness consistent with the approved postmining land use, contours, and surface-water drainage systems;
 - (ii) Prevents excess compaction of the materials; and
 - (iii) Protects the materials from wind and water erosion before and after seeding and planting.
 - (2) Before redistribution of the material removed under Paragraph (a) of this Section, the regraded land shall be treated if necessary to reduce potential slippage of the redistributed material and to promote root penetration. If no harm will be caused to the redistributed material and reestablished vegetation, such treatment may be conducted after such material is replaced.
 - (3) The Director may choose not to require the redistribution of topsoil or topsoil substitutes on the approved postmining embankments of permanent impoundments or of roads if it determines that--
 - (i) Placement of topsoil or topsoil substitutes on such embankments is inconsistent with the requirement to use the best technology currently available to prevent sedimentation, and
 - (ii) Such embankments will be otherwise stabilized.
 - (4) Nutrients and soil amendments. Nutrients and soil amendments shall be applied to the initially redistributed material when necessary to establish the vegetative cover.
- (e) Subsoil segregation. The Director may require that the B horizon, C horizon, or other underlying strata, or portions thereof, be removed and segregated, stockpiled, and redistributed as subsoil in accordance with the requirements of Paragraphs (c) and (d) of this Section if he finds that such subsoil layers are necessary to comply with the revegetation requirements of Sections 816.111, 816.113, 816.114, and 816.116 of this Chapter.

- (a) (Surface mining activities) [*Underground mining activities*] shall be planned and conducted to minimize changes to the prevailing hydrologic balance in both the permit and adjacent areas, in order to prevent longterm adverse changes in that balance that could result from those activities.
- (b) Changes in water quality and quantity, in the depth to ground water, and in the location of surface water drainage channels shall be minimized so that the approved postmining land use of the permit area is not adversely affected.
- (c) In no case shall Federal and State water quality statutes, ~~regulations~~, rules, standards, or effluent limitations be violated.
- (d) All surface mining and reclamation activities shall be conducted to minimize disturbance of the hydrologic balance within the permit and adjacent areas, to prevent material damage to the hydrologic balance outside the permit area, to assure the protection or replacement of water rights, and to support approved postmining land uses in accordance with the terms and conditions for the approved permit and the performance standards of this part. The Division may require additional preventative, remedial, or monitoring measures to assure that material damage to the hydrologic balance outside the permit area is prevented. Mining and reclamation practices that minimize water pollution and changes in flow shall be used in preference to water treatment.
 - (1) Each person who conducts (surface mining activities) [*underground mining activities*] shall emphasize mining and reclamation practices that prevent or minimize water pollution. Changes in flow or drainage shall be used in preference to the use of water treatment facilities.
 - (2) Acceptable practices to control and minimize water pollution include, but are not limited to –
 - (i) Stabilizing disturbed areas through land shaping;
 - (ii) Diverting runoff;
 - (iii) Achieving quickly germinating and growing stands of temporary vegetation;
 - (iv) Regulating channel velocity of water;
 - (v) Lining drainage channels with rock or vegetation;

- (e) *[Drinking, domestic or residential water supply. The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the Division received the permit application for the activities causing the loss, contamination or interruption. The baseline hydrologic information required in Sections 780.21 and 784.14 of this Chapter and the geologic information concerning baseline hydrologic conditions required in Sections 780.21 and 783.14 of this Chapter will be used to determine the impact of mining activities upon the water supply.]*

SECTION 816.42 HYDROLOGIC BALANCE: WATER QUALITY STANDARDS AND EFFLUENT LIMITATIONS

5-01-87

- (a)
- (1) All surface drainage from the disturbed area, including disturbed areas that have been graded, seeded, or planted, shall be passed through a sedimentation pond or a series of sedimentation ponds *[or a treatment facility]* before leaving the permit area. *[Any discharge of water from underground workings to surface waters which does not meet the effluent limitations of this Section shall also be passed through a sedimentation pond, a series of sedimentation ponds, or a treatment facility before leaving the permit area.]*

- (2) Sedimentation ponds and other treatment facilities *[for surface drainage from the disturbed area]* shall be maintained until the disturbed area has been restored and the vegetation requirements of Sections 816.111-816.117 are met and the quality of the untreated drainage from the disturbed area meets the applicable State and Federal water quality standards requirements for the receiving stream. *[Sedimentation ponds and treatment facilities for discharges from underground workings shall be maintained until either the discharge continuously meets the effluent limitations of this Section without treatment or until the discharge has permanently ceased.]*
- (3) (Director may grant exemptions from these requirements only when
- (i) The disturbed drainage area within the total disturbed area is small; and
 - (ii) The person who conducts the surface mining activities demonstrates that sedimentation ponds and treatment facilities are not necessary for drainage from the disturbed drainage areas to meet the effluent limitations in the table below and the applicable State and Federal water quality standards for downstream receiving waters.)
- (3) *[The Director may grant exemptions from these requirements only in accordance with the following*
- (i) *The person who conducts the underground mining activities demonstrates that sedimentation ponds and treatment facilities are not necessary for the drainage to be exempted to meet the effluent limitations of this Section or the applicable State and Federal water quality requirements for downstream receiving waters; and*
 - (ii)
 - (A) *For drainage from areas affected by surface operations and facilities, an exemption may be authorized only if the distributed surface drainage area within the total disturbed surface area is small and there is no mixture of surface drainage with a discharge from underground mine workings; or,*
 - (B) *For drainage from underground mine workings, exemption may be authorized only if there is no mixture of that drainage with drainage from surface areas.]*
- (4) For the purposes of this Section only, disturbed area shall not include those areas in which only diversion ditches, sedimentation ponds, or roads are installed in

accordance with this Part and the upstream area is not otherwise disturbed by the person who conducts the (surface mining activities) [*underground mining activities*].

- (5) Sedimentation ponds required by this Section shall be constructed in accordance with Section 816.46, in appropriate locations before beginning any (surface mining activities) [*underground mining activities*] in the drainage area to be affected.
 - (6) Where the sedimentation pond or series of sedimentation ponds is used so as to result in the mixing of drainage from the disturbed areas with drainage from other areas not disturbed by current surface coal mining and reclamation operations, the permittee shall achieve the effluent limitations set forth below for all of the mixed drainage when it leaves the permit area.
 - (7) Discharges of water from areas disturbed by surface mining activities shall be made in compliance with all applicable State and Federal water quality laws and regulations and with the effluent limitations for coal mining promulgated by the U.S. Environmental Protection Agency set forth in 40 CFR Part 434.
- (b) A discharge from the disturbed areas is not subject to the effluent limitations of this Section, if
- (1) The discharge is demonstrated by the discharger to have resulted from a precipitation event equal to or larger than 10-year 24-hour precipitation event; and
 - (2) The discharge is from facilities designed, constructed, and maintained in accordance with the requirements of this Part.
- (c) Adequate facilities shall be installed, operated, and maintained to treat any water discharged from the disturbed area [*or discharged from the underground mine*], so that it complies with all Federal and State laws and regulations and the limitations of this Section. If the pH of water to be discharged from the disturbed area [*or mine*] is less than 6.0, an automatic lime feeder or other automatic neutralization process approved by the Director shall be installed, operated and maintained. The Director may authorize the use of a manual system, if he finds that
- (1) Flow is infrequent and presents small and infrequent treatment requirements to meet applicable standards which do not require use of an automatic neutralization process; and
 - (2) Timely and consistent treatment is ensured.

Overland flow, including flow through litter, and shallow ground water flow from undisturbed areas, and flow in ephemeral streams, may be diverted away from disturbed areas by means of temporary or permanent diversions, if required or approved by the Director as necessary to minimize erosion, to reduce the volume of water to be treated, and to prevent or remove water from contact with acid-forming or toxic-forming materials. All diversions shall be designed to minimize adverse impacts to the hydrologic balance within the permit and adjacent areas, to prevent material damage outside the permit area and to assure the safety of the public.

- (a) Temporary diversions shall be constructed to pass safely the peak runoff from a precipitation event with a 2-year recurrence interval, or a larger event as specified by the Director.
- (b) To protect fills and property and to avoid danger to public health and safety, permanent diversions shall be constructed to pass safely the peak runoff from a precipitation event with a 10-year recurrence interval, or a larger event as specified by the Director. Permanent diversions shall be constructed with gently sloping banks that are stabilized by vegetation. Asphalt, concrete, or other similar linings shall be used only when approved by the Director to prevent seepage or to provide stability.
- (c) Diversions shall be designed, constructed, and maintained in a manner which prevents additional contributions of suspended solids to streamflow and to runoff outside the permit area, to the extent possible using the best technology currently available. Appropriate sediment control measures for these diversions may include, but not be limited to, maintenance of appropriate gradients, channel lining, revegetation, roughness structures, and detention basins.
- (d) No diversion shall be located so as to increase the potential for land slides. No diversions shall be constructed on existing land slides, unless approved by the Director.
- (e) When no longer needed, each temporary diversion shall be removed and the affected land regraded, topsoiled, and revegetated in accordance with Sections 816.22, 816.101-816.105, and 816.111-816.117.
- (f) Diversion design shall incorporate the following
 - (1) Channel lining shall be designed using standard engineering practices to pass safely the design velocities. Riprap shall comply with the requirements of Section 816.72(b)(5), except for sand and gravel.

artificial channel roughness structures shall be used in diversions only when approved by the Director as being necessary to control erosion. These structures shall be approved for permanent diversions only where they are stable and will require infrequent maintenance.

- (2) The combination of channel, bank, and flood-plain configurations shall be adequate to pass safely the peak runoff of a 10-year, 24-hour precipitation event for temporary diversions, a 100-year, 24-hour precipitation event for permanent diversions, or larger events specified by the Director. However, the capacity of the channel itself should be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream of the diversion.
 - (3) The design and construction of all stream channel diversions of perennial and intermittent streams shall be certified by a qualified registered professional engineer as meeting the performance standards of this Part and any design criteria set by the Division.
- (c) When no longer needed to achieve the purpose for which they were authorized, all temporary stream channel diversions shall be removed and the affected land regraded and revegetated, in accordance with Sections 816.22, 816.101-816.105, and 816.111-816.117. At the time diversions are removed, downstream water treatment facilities previously protected by the diversions shall be modified or removed to prevent overtopping or failure of the facilities. This requirement shall not relieve the person who conducts the (surface mining activities) [*underground mining activities*] from maintenance of a water treatment facility otherwise required under this Part of the permit.
- (d) When permanent diversions are constructed or stream channels restored, after temporary diversions, the operator shall;
- (1) Restore, enhance where practicable, or maintain natural riparian vegetation on the banks of the stream;
 - (2) Establish or restore the stream to its natural meandering shape of an environmentally acceptable gradient, as determined by the Director;
 - (3) Establish or restore the stream to a longitudinal profile and cross-section, including aquatic habitats -- usually a pattern of riffles, pools, and drops rather than uniform depth -- that approximate premining stream channel characteristics.

- (a) Appropriate sediment control measures shall be designed, constructed, and maintained using the best technology currently available to:
 - (1) Prevent, to the extent possible, additional contributions of sediment to streamflow or to runoff outside the permit area,
 - (2) Meet the more stringent of applicable State or Federal effluent limitations,
 - (3) Minimize erosion to the extent possible.
- (b) Sediment control measures include practices carried out within and adjacent to the disturbed area. The sedimentation storage capacity of practices in and downstream from the disturbed area shall reflect the degree to which successful mining and reclamation techniques are applied to reduce erosion and control sediment. Sediment control measures consist of the utilization of proper mining and reclamation methods and sediment control practices, singly or in combination. Sediment control methods include but are not limited to:
 - (1) Disturbing the smallest practicable area at any one time during the mining operation through progressive backfilling, grading, and prompt revegetation as required in Section 816.111(b);
 - (2) Stabilizing the backfill material to promote a reduction in the rate and volume of runoff, in accordance with the requirements of Section 816.101;
 - (3) Retaining sediment within disturbed areas;
 - (4) Diverting runoff away from disturbed areas;
 - (5) Diverting runoff using protected channels or pipes through disturbed areas so as not to cause additional erosion;
 - (6) Using straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment;
 - (7) Treating with chemicals, and
 - (8) *[Treating mine drainage in underground sumps.]*

(a) For the purpose of this section only:

(1) [RESERVED]

(2) Disturbed area shall not include those areas

(i) In which the only surface mining activities include diversion ditches, siltation structures, or roads that are designed, constructed and maintained in accordance with this part; and

(ii) For which the upstream area is not otherwise disturbed by the operator.

(3) Other treatment facility means any chemical treatments, such as flocculation, or neutralization, or mechanical structures, such as clarifiers or precipitators, that have a point-source discharge and that are utilized:

(i) To prevent additional contribution of dissolved or suspended solids to streamflow or runoff outside the permit area, or

(ii) To comply with all applicable state and Federal water-quality laws and regulations.

(b) General requirements

(1) Additional contributions of suspended solids sediment to streamflow or runoff outside the permit area shall be prevented to the extent possible, using the best technology currently available.

(2) All surface drainage from the disturbed area shall be passed through a siltation structure before leaving the permit area, except as provided in paragraph (b)(5) or (e) of this Section.

[Ed. note: Section 816.46(b)(2) is suspended]

(3) Siltation structures for an area shall be constructed before beginning any surface mining activities in that area and, upon construction, shall be certified by a qualified registered professional engineer to be constructed as designed and as approved in the reclamation plan.

- (4) Any siltation structure which impounds water shall be designed, constructed and maintained in accordance with Section 816.49 of this Chapter.
 - (5) Siltation structures shall be maintained until removal is authorized by the Division and the disturbed area has been stabilized and revegetated. In no case shall the structure be removed sooner than two years after the last augmented seeding.
 - (6) When siltation structure is removed, the land on which the siltation structure was located shall be regraded and revegetated in accordance with the reclamation plan and Section 816.111 through 816.116 of this Chapter. Sedimentation ponds approved by the Division for retention as permanent impoundments may be exempted from this requirement.
- (c) Sedimentation ponds:
- (1) When used, sedimentation ponds shall –
 - (i) Be used individually or in series:
 - (ii) Be located as near as possible to the disturbed area and out of perennial streams unless approved by the Director, and
 - (iii) Be designed, constructed, and maintained to –
 - (A) Provide adequate sediment storage volume;
 - (B) Provide adequate detention time to allow the effluent from the ponds to meet State and Federal effluent limitations;
 - (C) Contain or treat the 10-year, 24-hour precipitation event ("design event") unless a lesser design event is approved by the Director based on terrain, climate, other site-specific conditions and on a demonstration by the operator that the effluent limitations of Section 816.42 will be met;
 - (D) Provide a nonclogging, dewatering device adequate to maintain the detention time required under paragraph (c)(1)(iii)(B) of this Section;
 - (E) Minimize, to the extent possible, short circuiting;
 - (F) Provide a periodic sediment removal sufficient to maintain

adequate volume for the design event;

(G) Ensure against excessive settlement;

(H) Be free of sod, large roots, frozen soils, and acid- or toxic-forming coal-processing waste; and,

(I) Be compacted properly.

(2) Spillways. A sedimentation pond shall include either a combination of principal and emergency spillways or single spillway configured as specified in Section 816.49(a)(9).

(d) Other treatment facilities;

(1) Other treatment facilities shall be designed to treat the 10-year, 24-hour, precipitation event unless a lesser design event is approved by the Director based on terrain, climate, other site-specific conditions and a demonstration by the operator that the effluent limitations of Section 816.42 will be met.

(2) Other treatment facilities shall be designed in accordance with the applicable requirements of paragraph (c) of this section.

(e) Exemptions to the requirements of this Section may be granted if-

(1) The disturbed drainage area within the total disturbed area is small: and

(2) The operator demonstrates that siltation structures and alternate sediment control measures are not necessary for drainage from the disturbed area to meet the effluent limitations under Section 816.42 and the applicable State and Federal water-quality standards for receiving waters.

SECTION 816.47

HYDROLOGIC BALANCE: DISCHARGE STRUCTURES

5-29-80

Discharge from sedimentation ponds, permanent and temporary impoundments, coal processing waste dams and embankments, and diversions shall be controlled, by energy dissipators, riprap channels, and other devices where necessary, to reduce erosion, to prevent deeping or enlargement of stream channels, and to minimize disturbance of the hydrologic balance. Discharge structures shall be designed according to standard engineering design procedures.

SECTION 816.48

HYDROLOGIC BALANCE: ACID-FORMING AND TOXIC-FORMING SPOIL

5-27-99

Drainage from acid-forming and toxic-forming (spoil) *[underground development waste and spoil]* into ground and surface water shall be avoided by;

- (a) Identifying, burying, and treating where necessary, *[waste and]* spoil which, in the judgment of the Director, may be detrimental to vegetation or may adversely affect water quality if not treated or buried;
- (b) Preventing water from coming into contact with acid-forming and toxic-forming materials in accordance with Section 816.102(f), and other measures as required by the Director; and
- (c) Burying or otherwise treating all acid-forming or toxic-forming (spoil) *[underground development waste and spoil]* within thirty (30) days after it is first exposed on the mine site, or within a lesser period required by the Director. Temporary storage of such materials may be approved by the Director upon a finding that burial or treatment within thirty (30) days is not feasible and will not result in any material risk of water pollution or other environmental damage. Storage shall be limited to the period until burial or treatment first becomes feasible. Acid-forming or toxic-forming (spoil) *[underground development waste and spoil]* to be stored shall be placed on impermeable material and protected from erosion and contact with surface water.

SECTION 816.49

IMPOUNDMENTS

12-05-97

- (a) General requirements. The requirements of this paragraph apply to both temporary and permanent impoundments.
 - (1) Impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210-VI-TR60, Oct. 1985), "Earth Dams and Reservoirs," shall comply with the "Minimum Emergency Spillway Hydrologic Criteria," table in TR-60 and the requirements of this section. The technical release is hereby incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, order No. PB 87-157509/AS. Copies can be inspected at the OSM Headquarters Office, Office of Surface

Mining Reclamation and Enforcement, Administrative Record, Room 660, 800 North Capitol Street, Washington, DC or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

- (2) Impoundments meeting the size or other criteria of 30 CFR 77.216(a) shall comply with the requirements of 30 CFR 77.216 and this section. The plan required to be submitted to the District Manager of MSHA under 30 CFR 77.216 shall also be submitted to the Division as part of the permit application.
- (3) Design certification. The design of impoundments shall be certified by a qualified registered professional engineer as designed to meet the requirements of this part using current, prudent engineering practices, and any design criteria established by the Division. The qualified registered professional engineer shall be experienced in the design and construction of impoundments.
- (4) Stability.
 - (i) An Impoundment meeting the NRCS Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR Section 77.216(a) shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2.
 - (ii) Impoundments not included in paragraph (a)(4)(i) of this section, except for a coal mine waste impounding structure, shall have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions or meet the requirements of Section 780.25(c).
- (5) Freeboard. Impoundments shall have adequate freeboard to resist over-topping by waves and by sudden increases in storage volume. Impoundments meeting the NRCS Class B or C criteria for dams in TR-60 shall comply with the freeboard hydrograph criteria in the “Minimum Emergency Spillway Hydrological Criteria” table in TR-60.
- (6) Foundation.
 - (i) Foundation and abutments for the impounding structure shall be designed to be stable under all conditions of construction and operation of the impoundment. For an impoundment meeting the NRCS Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR Section 77.216(a), foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability.

- (ii) All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability.
- (7) Slope protection shall be provided to protect against surface erosion at the site and protect against sudden drawdown.
- (8) Faces of embankments and surrounding areas shall be vegetated, except that faces where water is impounded may be riprapped or otherwise stabilized in accordance with accepted design practices.
- (9) Spillways. An impoundment shall include either a combination of principal and emergency spillways or a single spillway configured as specified in paragraph (a)(9)(i) of this section, designed and constructed to safely pass the applicable design precipitation event specified in paragraph (a)(9)(ii) of this section, except as set forth in paragraph (c)(2) of this section.
 - (i) The Director may approve a single open-channel spillway that is:
 - (A) Of nonerodable construction and designed to carry sustained flows; or
 - (B) Earth- or grass-lined and designed to carry short-term infrequent flows at non-erosive velocities where sustained flows are not expected.
 - (ii) Except as specified in paragraph (c)(2) of this section, the required design precipitation event for an impoundment meeting the spillway requirements of paragraph (a)(9) of this section is:
 - (A) For an impoundment meeting the NRCS Class B or C criteria for dams in TR-60, the emergency spillway hydrograph Criteria in the “Minimum Emergency Spillway Hydrologic Criteria” table in TR-60, or greater event as specified by the Division.
 - (B) For an impoundment meeting or exceeding the size or other criteria of 30 CFR Section 77.216(a), a 100 year 6-hour event, or greater event as specified by the Division.
 - (C) For an impoundment not included in paragraph (a)(9)(ii)(A) and (B) of this section, a 25-year 6-hour event, or greater event as specified by the Division.

- (10) The vertical portion of any remaining highwall shall be located far enough below the low-water line along the full extent of the highwall to provide adequate safety and access for the proposed water users.
 - (11) Inspections. A qualified registered professional engineer or other qualified professional specialist, under the direction of the professional engineer, shall inspect the impoundment. The professional engineer or specialist shall be experienced in the construction of impoundments.
 - (i) Inspections shall be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.
 - (ii) The qualified registered professional engineer shall promptly, after each inspection, provide to the Division a certified report that the impoundment has been constructed and maintained as designed and in accordance with the approved plan and this Chapter. The report shall include discussion of any appearances of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded waters, existing storage capacity, any existing or required monitoring procedures and instrumentation and any other aspects of the structure affecting stability.
 - (iii) A copy of the report shall be retained at or near the mine site.
 - (12) Impoundments meeting the NRCS Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR Section 77.216 must be examined in accordance with 30 CFR 77.216-3. Impoundments not meeting the NRCS Class B or C criteria for dams in TR-60, or subject to Sec. 77.216, shall be examined at least quarterly. A qualified person designated by the operator shall examine impoundments for the appearance of structural weakness and other hazardous conditions.
 - (13) Emergency procedures. If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall promptly inform the Division of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the Division shall be notified immediately. The Division shall then notify the appropriate agencies that other emergency procedures are required to protect the public.
- (b) Permanent impoundments. A permanent impoundment of water may be created, if

authorized by the Division in the approved permit based upon the following demonstration;

- (1) The size and configuration of such impoundment will be adequate for its intended purposes.
- (2) The quality of impounded water will be suitable on a permanent basis for its intended use and, after reclamation, will meet applicable State and Federal water quality standards, and discharges from the impoundment will meet applicable effluent limitations and will not degrade the quality of receiving water below applicable State and Federal water quality standards.
- (3) The water level will be sufficiently stable and be capable of supporting the intended use.
- (4) Final grading will provide for adequate safety and access for proposed water users.
- (5) The impoundment will not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.
- (6) The impoundment will be suitable for the approved postmining land use.
- (7) The design precipitation event for the spillways for a permanent impoundment will be:
 - (i) For impoundments meeting the size or other qualifying criteria of 30CFR 77.216(a). A 100-year, 6-hour event, or such larger event as the Division may require.
 - (ii) For impoundments not meeting the size or other qualifying criteria of 30CFR 77.216(a). A 25-year, 6-hour event, or such larger event as the Division may require. (c)

Temporary impoundments.

- (1) The Division may authorize the construction of temporary impoundments as part of a surface coal mining operation.
- (2) In lieu of meeting the requirements in paragraph (a)(9)(i) of this section, the Director may approve an impoundment that relies primarily on storage to control the runoff from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer or qualified

registered professional land surveyor in accordance with Section 780.25(a) of this Chapter that the impoundment will safely control the design precipitation event, the water from which shall be safely removed in accordance with current, prudent, engineering practices. Such an impoundment shall be located where failure would not be expected to cause loss of life or serious property damage, except where:

- (i) Impoundments meeting the NRCS Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR Section 77.216(a) shall be designed to control the precipitation of the probable maximum precipitation of a 6-hour event, or greater event specified by the Division.
- (ii) Impoundments not included in paragraph (c)(2)(i) of this section shall be designed to control the precipitation of the 100-year 6-hour event, or greater event specified by the Division.

SECTION 816.50-S HYDROLOGIC BALANCE: GROUNDWATER PROTECTION
5-29-80

- (a) (Backfilled materials shall be placed so as to minimize contamination of groundwater systems with acid, toxic, or otherwise harmful mine drainage, to minimize adverse effects of mining on groundwater systems outside the permit area, and to support approved postmining land uses.
- (b) To control the effects of mine drainage, pits, cuts, and other mine excavation or disturbances shall be located, designed, constructed, and utilized in such manner as to prevent or control discharge of acid, toxic, or otherwise harmful mine drainage waters into groundwater systems and to prevent adverse impacts on such groundwater systems or on approved postmining land uses.)

SECTION 816.50-U HYDROLOGIC BALANCE: UNDERGROUND MINE ENTRY
AND ACCESS DISCHARGES
5-29-80

- (a) *[Surface entries and accesses to underground workings, including adits and slopes, shall be located, designed, constructed, and utilized to prevent or control gravity discharge of water from the mine.]*
- (b) *Gravity discharge of water from an underground mine, other than a drift mine subject to Paragraph (c) of this Section, may be allowed by the regulatory authority, if it is demonstrated that;*

- SECTION 816.51-S HYDROLOGIC BALANCE: PROTECTION OF
GROUNDWATER RECHARGE CAPACITY
- 10-29-92

- (a) Supports the approved postmining land use;
- (b) Minimizes disturbances to the prevailing hydrologic balance in the permit area and in adjacent areas; and
- (c) Provides a rate of recharge that approximates the premining recharge rate.)

SECTION 816.52-S HYDROLOGIC BALANCE: SURFACE AND
GROUNDWATER MONITORING

10-29-92

(a) Groundwater.

- (1) Groundwater levels, infiltration rates, subsurface flow and storage characteristics, and the quality of groundwater shall be monitored in a manner approved by the Director, to determine the effects of (surface mining activities) [*underground mining activities*] on the recharge capacity of reclaimed lands and on the quantity and quality of water in groundwater systems in the permit and adjacent areas.
- (2) When (surface mining activities) [*underground mining activities*] may affect the groundwater systems which serve as aquifers which significantly ensure the hydrologic balance of water use on or off the permit area, groundwater levels and groundwater quality shall be periodically monitored. Monitoring shall include measurements from a sufficient number of wells and mineralogical and chemical analyses of aquifer, overburden, and spoil that are adequate to reflect changes in groundwater quantity and quality resulting from those activities. Monitoring shall be adequate to plan for modification of (surface mining activities) [*underground mining activities*], if necessary, to minimize disturbance of the prevailing hydrologic balance.
- (3) As specified and approved by the Director, the person who conducts (surface mining activities) [*underground mining activities*] shall conduct additional hydrologic tests, including drilling, infiltration tests, and aquifer tests and shall submit the results to the Director to demonstrate compliance with Sections 816.50-816.52.
- (4) Groundwater monitoring data shall be submitted quarterly to the Division or more frequently as prescribed by the Director. Monitoring reports shall include analytical results from each sample taken during the reporting period. When the analysis of any groundwater sample indicates noncompliance with the permit conditions, then the operator shall promptly notify the Division and immediately take remedial action.

(b) Surface water.

- (1) Surface water monitoring shall be conducted in accordance with the monitoring program submitted under Section 780.21(b)(4) or 784.14(b)(3) and approved by

the Director. The Director shall determine the nature of data, frequency of collection, and reporting requirements. Monitoring shall –

- (i) Be adequate to measure accurately and record water quantity and quality of the discharges from the permit area;
 - (ii) In all cases in which analytical results of the sample collections indicate noncompliance with a permit condition or applicable standard has occurred, result in the person who conducts the (surface mining activities) *[underground mining activities]* notifying the Director within five (5) days. Where a National Pollutant Discharge Elimination System (NPDES) permit effluent limitation noncompliance has occurred, the person who conducts (surface mining activities) *[underground mining activities]* shall forward the analytic results concurrently with the written notice of noncompliance.
 - (iii) Result in quarterly reports to the Director, to include analytical results from each sample taken during the quarter. Any sample results which indicate a permit violation will be reported immediately to the Director. In those cases where the discharge for which water monitoring reports are required is also subject to regulations by a NPDES permit issued under the Clean Water Act of 1977 (30 U.S.C. Sec. 1251-1378) and where such permit includes provisions for equivalent reporting requirements and requires filing of the water monitoring reports within ninety (90) days or less of sample collection, the following alternative procedure shall be used. The person who conducts the (surface mining activities) *[underground mining activities]* shall submit to the Division on the same time schedule as required by the NPDES permit or within ninety (90) days following sample collection, whichever is earlier, either –
 - (A) A copy of the completed reporting form filed to meet NPDES permit requirements; or
 - (B) A letter identifying the State or Federal government official with whom the reporting form was filed to meet NPDES permit requirements and the date of filing.
- (2) (After disturbed areas have been regraded and stabilized according to this Part, the person who conducts surface mining activities shall monitor surface water flow and quality. Data from this monitoring may be used to demonstrate that the quality and quantity of runoff without treatment is consistent with the requirements of this Part to minimize disturbance to the prevailing hydrologic

balance and attain the approved postmining land use. These data may also provide a basis for approval by the Director for removal of water quality or flow control systems.)

- (3) *[Surface water flow and quality, including discharges to surface waters from the permit area, and receiving waters, shall continue to be monitored after both the cessation of use of underground mine workings and after surface disturbed areas have been regraded and stabilized according to this Part. Data from this monitoring may be used to demonstrate that the quality and quantity of runoff without treatment is consistent with the requirement of this Part to minimize disturbance to the prevailing hydrologic balance and to attain the approved postmining land use. These data may also provide a basis for approval by the regulatory authority for removal of water quality or flow control systems.]*
- (4) Equipment, structures, and other devices necessary to measure and sample accurately the quality and quantity of surface water discharges from the disturbed area *[and from underground mine workings]* shall be properly installed, maintained, and operated and shall be removed when no longer required.

SECTION 816.53

HYDROLOGIC BALANCE: TRANSFER OF WELLS

5-01-87

Before final release of bond, exploratory or monitoring wells shall be sealed in a safe and environmentally sound manner in accordance with Sections 816.13 to 816.15. With the prior approval of the Division, wells may be transferred to another party for further use. At a minimum, the conditions of such transfer shall comply with State and local laws and the permittee shall remain responsible for the proper management of the well until bond release in accordance with Sections 816.13 to 816.15

SECTION 816.54

HYDROLOGIC BALANCE: WATER RIGHTS AND REPLACEMENT

10-29-92

Any person who conducts surface mining activities shall replace the water supply of an owner of interest in real property who obtains all or part of his or her supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source, where the water supply has been affected by contamination, diminution, or interruption proximately resulting from the surface mining activities.

SECTION 816.55

HYDROLOGIC BALANCE: DISCHARGE OF WATER INTO

816-29

AN UNDERGROUND MINE

5-01-87

Surface water *[or water from an underground mine]* shall not be diverted or otherwise discharged into other underground mine workings, unless the person who conducts the (surface mining activities) *[underground mining activities]* demonstrates to the Director that this will –

- (a) Abate water pollution or otherwise eliminate public hazards resulting from (surface mining activities) *[underground mining activities]*; and,
- (b) Be discharged as a controlled flow, meeting the effluent limitations of Section 816.42 for pH and total suspended solids, except that the pH and total suspended solid limitations may be exceeded, if approved by the Director, and is limited to –
 - (1) Coal processing waste;
 - (2) Fly ash from a coal-fired facility;
 - (3) Sludge from an acid mine drainage treatment facility;
 - (4) Flue gas desulfurization sludge;
 - (5) Inert materials used for stabilizing underground mines or;
 - (6) Underground mine development wastes;
- (c) In any event, the discharge from underground mines to surface waters will not cause, result in or contribute to a violation of applicable water quality standards or effluent limitations;
- (d) Minimizes disturbance to the hydrologic balance on the permit area, prevent material damage outside the permit area and otherwise eliminate public hazards resulting from surface mining activities;
- (e) Meets with the approval of the Mine Safety and Health Administration; and
- (f) *[Continues as a controlled and identifiable flow and is ultimately treated by an existing treatment facility.]*

SECTION 816.56

HYDROLOGIC BALANCE: POSTMINING
REHABILITATION OF SEDIMENTATION PONDS,
DIVERSIONS, IMPOUNDMENTS, AND TREATMENT
FACILITIES

5-29-80

Before abandoning the permit area or seeking bond release, the person who conducts the (surface mining activities) [*underground mining activities*] shall ensure that all temporary structures are removed and reclaimed, and that all permanent sedimentation ponds, diversions, impoundments, and treatment facilities meet the requirements of this Chapter for permanent structures, have been maintained properly, and meet the requirements of the detailed design plan for permanent structures and impoundments. The operator shall renovate such structures if necessary to meet the requirements of this Chapter and to conform to the approved reclamation plan.

SECTION 816.57 HYDROLOGIC BALANCE: STREAM BUFFER ZONES

5-01-87

- (a) No land within 100 feet of a perennial stream or a stream with a biological community determined according to Paragraph (c) below shall be disturbed by surface mining activities [*surface operations and facilities*], except in accordance with Section 816.43-816.44, unless the Director specifically authorizes (surface mining activities) [*underground mining activities*] closer to or through such a stream upon finding –
 - (1) That the original stream channel will be restored; and
 - (2) The diversion will not adversely affect the water quantity and quality and related environmental resources of the stream.
- (b) The area not to be disturbed shall be designated a buffer zone and marked as specified in Section 816.11.
- (c) A stream with a biological community shall be determined by the existence in the stream at any time of an assemblage of two or more species of arthropods or mulluscan animals which are –
 - (1) Adapted to flowing water for all or part of their life cycle;
 - (2) Dependent upon a flowing water habitat;
 - (3) Reproducing or can reasonably be expected to reproduce in the water body where they are found; and
 - (4) Longer than 2 millimeters at some stage of the part of their life cycle spent in the flowing water habitat.

SECTION 816.59 COAL RECOVERY

5-01-87

(Surface mining activities) [*underground mining activities*] shall be conducted so as to maximize the utilization and conservation of the coal, while utilizing the best appropriate technology currently available to maintain environmental integrity, so that re-affecting the land in the future through surface coal mining operations is minimized.

SECTION 816.61-S USE OF EXPLOSIVES: GENERAL REQUIREMENTS

12-17-84

- (a) (Each person who conducts surface mining activities shall comply with all applicable State and Federal laws in the use of explosives.
- (b) Blasts that use more than five (5) pounds of explosive or blasting agent shall be conducted according to the schedule required by Section 816.64.
- (c) All blasting operations shall be conducted under the direction of a certified blaster. Operations shall possess a valid certification as required by Part 850.)
 - (1) Certificates of blaster certification shall be carried by blasters or shall be on file at the permit area during blasting operations.
 - (2) A blaster and at least one other person shall be present at the firing of a blast.
 - (3) Persons responsible for blasting operations at a blasting site shall be familiar with the blasting plan and site-specific performance standards.
- (d) Blast design.
 - (1) An anticipated blast design shall be submitted if blasting operations will be conducted within –
 - (i) 1,000 feet of any building used as a dwelling, public buildings, school, church, or community or institutional building outside the permit area;
 - (ii) 500 feet of an active or abandoned underground mine.
 - (2) The blast design may be presented as part of a permit application or at a time, before the blast, approved by the regulatory authority.
 - (3) The blast design shall contain sketches of the drill patterns, delay periods, and decking and shall indicate the type and amount of explosives to be used, critical dimensions, and the location and general description of structures to be protected, as well as a discussion of design factors to be used, which protect the public and

meet applicable airblast, flyrock, and ground vibration standards in Section 816.65.

- (4) The blast design shall be prepared and signed by a certified blaster.
- (5) The regulatory authority may require changes to the design submitted.

SECTION 816.61-U USE OF EXPLOSIVES: GENERAL REQUIREMENTS

12-17-84

- (a) *[This Section applies only to surface blasting activities incident to underground mining, including, but not limited to, initial rounds of slopes and shafts.]*
- (b) *Each person who conducts underground mining activities shall comply with all applicable State and Federal laws and in the use of explosives.*
- (c) *All blasting operations shall be conducted under the direction of a certified blaster.*
 - (1) *Certificates of blaster certification shall be carried by blasters or shall be on file at the permit area during blasting operations.*
 - (2) *A blaster and at least one other person shall be present at the firing of a blast.*
 - (3) *Persons responsible for blasting operations at the blasting site shall be familiar with the blasting plan and site specific performance standards.*
- (d) *Blast design.*
 - (1) *An anticipated blast design shall be submitted if blasting operations will be conducted within –*
 - (i) *1,000 feet of any building used as a dwelling, public buildings, school, church, or community or institutional building outside the permit area;*
 - (ii) *500 feet of an active or abandoned underground mine.*
 - (2) *The blast design may be presented as part of a permit application or at a time, before the blast, approved by the regulatory authority.*
 - (3) *The blast design shall contain sketches of the drill patterns, delay periods, and decking and shall indicate the type and amount of explosives to be used, critical dimensions, and the location and general description of structures to be protected, as well as a discussion of design factors to be used, which protect the*

public and meet applicable airblast, flyrock, and ground vibration standards in Section 816.65.

- (4) *The blast design shall be prepared and signed by a certified blaster.*
- (5) *The regulatory authority may require changes to the design submitted.]*

SECTION 816.62

USE OF EXPLOSIVES: PRE-BLASTING SURVEY

12-17-84

- (a) At least 30 days before initiation of blasting, the operator shall notify in writing, all residents or owners of dwellings or other structures located within 2 mile of the permit area how to request a pre-blasting survey.
- (b) A resident or owner of a dwelling or structure within 2 mile of any part of the permit area may request a pre-blasting survey. This regulatory authority, who shall promptly conduct a pre-blasting survey of the dwelling or structure and promptly prepare a written report of the survey. An updated survey of any additions, modifications, or renovations shall be performed by the operator if requested by the resident or owner.
- (c) The operator shall determine the condition of the dwelling or structure and shall document any pre-blasting damage and other physical factors that could reasonably be affected by the blasting. Structures such as pipelines, cables, transmission lines, and cisterns, wells, and other water systems warrant special attention, however, the assessment of these structures may be limited to surface conditions and other readily available data.
- (d) The written report of the survey shall be signed by the person who conducted the survey. Copies of the report shall be promptly provided to the regulatory authority and to the person requesting the survey. If the person requesting the survey disagrees with the contents and/or recommendations contained therein, he or she may submit to both the operator and the regulatory authority a detailed description of the specific area of disagreement.
- (e) Any surveys requested more than 10 days before the planned initiation of blasting shall be completed by the operator before the initiation of blasting.

SECTION 816.64-S

USE OF EXPLOSIVES: PUBLIC NOTICE OF BLASTING SCHEDULE

12-17-84

- (a) (General requirements
 - (1) The operator shall conduct blasting operations at times approved by the regulatory

authority and announced in the blasting schedule. The regulatory authority may limit the area covered, timing, and sequence, if such limitations are necessary and reasonable in order to protect the public health and safety or welfare.

(b) Blasting schedule publication

- (1) Each person who conducts surface mining activities shall publish a blasting schedule at least 10 days, but not more than 30 days, before beginning a blasting program in which blasts that use more than 5 pounds of explosive or blasting agent are detonated. The blasting schedule shall be published in a newspaper of general circulation in the locality of the blasting site.
- (2) Copies of the schedule shall be distributed by mail to local governments and public utilities and by mail or delivered to each residence within one-half mile of the permit area described in the schedule. For the purposes of this Section, the permit area does not include haul or access roads, coal preparation and loading facilities, and transportation facilities between coal excavation areas and coal preparation or loading facilities, if blasting is not conducted in these areas. Copies sent to residences shall be accompanied by information advising the owner or resident how to request a pre-blasting survey.
- (3) The person who conducts the surface mining activities shall republish and redistribute the schedule by mail at least every 12 months.

(c) Blasting schedule contents

- (1) The blasting schedule shall contain at a minimum –
 - (i) Name, address, and telephone number of operator;
 - (ii) Identification of the specific areas in which blasting will take place. Each specific blasting area described shall be reasonably compact and not larger than 300 acres;
 - (iii) Dates and time periods when explosives are to be detonated. These periods shall not exceed an aggregate of 4 hours in any one day;
 - (iv) Methods to be used to control access to the blasting area;
 - (v) Types of audible warnings and all-clear signals to be used before and after blasting; and
 - (vi) A description of unavoidable hazardous situations referred to in Section 816.65(b) which have been approved by the Director for blasting at

times other than those described in the schedule.

(d) Public notice of changes to blasting schedules

- (1) Before blasting in areas or at times not in a previous schedule, the person who conducts the surface mining activities shall prepare a revised blasting schedule according to the procedures in Paragraphs (b) and (c) of this Section. Where notice has previously been mailed to the owner or residents under Paragraph (b)(2) of this Section with advice on requesting a pre-blast survey, the notice of change need not include information regarding pre-blast surveys.
- (2) If there is a substantial pattern of non-adherence to the published blasting schedule as evidenced by the absence of blasting during scheduled periods, the Director may require that the person who conducts the surface mining activities prepare a revised blasting schedule according to the procedures in Paragraph (d)(1) of this Section.)

SECTION 816.64-U USE OF EXPLOSIVES: PUBLIC NOTICE OF BLASTING
SCHEDULE

12-17-84

- (a) *[A resident or owner of a dwelling or structure that is located within one-half mile of any area affected by surface blasting activities shall be notified approximately 24 hours prior to any surface blasting event].*

SECTION 816.65 USE OF EXPLOSIVES: SURFACE BLASTING
REQUIREMENTS

10-29-92

- (a) All blasting shall be conducted between sunrise and sunset.

- (1) The Director may specify more restrictive time periods, based on public requests or other relevant information, according to the need to adequately protect the public from adverse noise.
- (2) Blasting may, however, be conducted between sunset and sunrise if:
 - (i) A blast that has been prepared during the afternoon must be delayed due to the occurrence of an unavoidable hazardous condition and cannot be delayed until the next day because a potential safety hazard could result that cannot be adequately mitigated.

- (ii) In addition to the required warning signals, oral notices are provided to persons within one-half mile of the blasting site; and
 - (iii) A complete written report of blasting at night is filed by the person conducting the blasting activities with the Division not later than three (3) days after the night blasting. The report shall include a description in detail of reasons for the delay in blasting including why the blast could not be held over to the next day, when the blast was actually conducted, the warning notices given, and a copy of the blast report required by Section 816.68.
- (b) (For surface mining activities, blasting shall be conducted at times announced in the blasting schedule, except in those unavoidable hazardous situations previously approved by the Director in the permit application, where operator or public safety require unscheduled detonation).
- (c) Warning and all-clear signals of different character that are audible within a range of one-half mile from the point of the blast shall be given. Each person within the permit area and each person who resides or regularly works within one-half mile of the permit each shall be notified of the meaning of the signals through appropriate instructions. These instructions shall be periodically delivered or otherwise communicated in a manner which can be reasonably expected to inform such persons of the meaning of the signals. Each person who conducts surface mining activities shall maintain signs in accordance with Section 816.11(f).
- (d) Access to an area possibly subject to flyrock from blasting shall be regulated to protect the public and livestock. Access to the area shall be controlled to prevent the presence of livestock or unauthorized personnel during blasting and until an authorized representative of the person who conducts the (surface mining activities) [*underground mining activities*] has reasonably determined –
 - (1) That no unusual circumstances, such as imminent slides or undetonated charges, exist, and
 - (2) That access to and travel in or through the area can be safely resumed.
- (e) Airblast –
 - (1) Limits
 - (i) Airblast shall not exceed the maximum limits listed below at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area, except as provided in

paragraph (j) of this section.

Lower Frequency Limit of Measuring System, in Hz (+3dB)	Maximum Level in dB
0.1 Hz or lower -- flat response ¹	134 Peak
2 Hz or lower -- flat response	133 peak
6 Hz or lower -- flat response	129 peak
C - Weighted -- slow response ¹	105 peak dBc

¹Only when approved by the regulatory authority

- (ii) If necessary to prevent damage, the regulatory authority shall specify lower maximum allowable airblast levels than those of paragraph (e)(1)(i) of this section for use in the vicinity of a specific operation.

(2) Monitoring

- (i) The operator shall conduct periodic monitoring to ensure compliance with the airblast standards. The regulatory authority may require airblast measurement of any or all blasts and may specify the locations at which such measurements are taken.
- (ii) The measuring systems shall have an upper-end flat-frequency response of at least 200 Hz.

(f) RESERVED

- (g) Flyrock, including blasted material traveling along the ground, shall not be cast from the blasting vicinity more than half the distance to the nearest dwelling or other occupied structure and in no case beyond the line of property owned or leased by the permitter, or beyond the area of regulated access required under paragraph (d) of this Section.

- (h) Blasting shall be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of ground or surface waters outside the permit area.

(i) Ground vibrations.

- (1) General. In all blasting operations except as otherwise authorized in paragraph (j) of this section, the maximum ground vibration shall not exceed the values approved in the blasting plan required under Section 780.13 of this chapter. The maximum ground vibration for protected structures listed in paragraph (i)(2)(i) of this section shall be established in accordance with either the maximum peak-particle-velocity limits of paragraph (i)(2), the scaled distance equation of

paragraph (l)(1), the blasting level chart of paragraph (l)(2) of this section, or by the regulatory authority under paragraph (l)(3) of this section. All structures in the vicinity of the blasting area, not listed in paragraph (i)(2)(i) of this section, such as water towers, pipelines and other utilities, tunnels, dams, impoundments, and underground mines shall be protected from damage by establishment of a maximum allowable limit on the ground vibration, submitted by the operator in the blasting plan and approved by the regulatory authority.

(2) Maximum peak particle velocity.

- (i) The maximum ground vibration shall not exceed the following limits at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area:

Distance (d), from the blasting site, in feet	Maximum allowable peak particle velocity (Vmax) for ground vibration in inches/second ¹	Scaled-distance factor to be applied without seismic monitoring ² (Ds)
0 - 300.....	1.25	50
301 - 5,000.....	1.00	55
5,001 and beyond.....	0.75	65

¹ Ground vibration shall be measured as the particle velocity. Particle velocity shall be recorded in three mutually perpendicular directions. The maximum allowable peak particle velocity shall apply to each of the three measurements.

² Applicable to the scale-distance equation of paragraph (l)(2)(i) of this Section.

- (ii) A seismographic record shall be provided for each blast.

- (j) If blasting is conducted to prevent adverse impacts on any underground mine and changes in the course, channel, or availability of ground or surface water outside the permit area, then the maximum peak particle velocity limitation of paragraph (i) of this Section shall not apply at the following location:

- (1) At structures owned by the person conducting the mining activity, and not leased to another party; and

- (2) At structure owned by the person conducting the mining activity, and leased to another party, if a written waiver by the lessee is submitted to the Division prior to blasting
- (k) An equation for determining the maximum weight of explosives to be detonated within any 8-millisecond period is in Paragraph (1) of this Section. If the blasting is conducted in accordance with this equation, the peak particle velocity shall be deemed to be within the legal limits.
- (l) Scale distance equation.
 - (1) An operator may use the scaled-distance equation, $W = (D/D_s)^2$, to determine the allowable charge weight of explosives to be detonated in any 8-millisecond period, without seismic monitoring; where W = the maximum weight of explosives, in pounds; D = the distance, in feet from the blasting site to the nearest protected structure; and D_s = the scaled-distance factor, which may initially be approved by the regulatory authority using the values for scaled-distance factor listed in paragraph (i)(2)(i) of this section.
 - (2) Blasting level chart.
 - (A) An operator may use the ground vibration limits in Figure 1 to determine the maximum allowable ground vibration.
- (m) If the Figure 1 limits are used, a seismographic record including both particle velocity and vibration-frequency levels shall be provided for each blast. The method for the analysis of the predominant frequency contained in the blasting records shall be approved by the regulatory authority before application of this alternative blasting criterion.
 - (1) The maximum allowable ground vibration shall be reduced by the regulatory authority beyond the limits otherwise provided by this section, if determined necessary to provide damage protection.

- (b) The use of a modified equation to determine maximum weight of explosives per delay for blasting operations at a particular site, may be approved by the Director, on receipt of a petition accompanied by reports including seismograph records of test blasting on the site. In no case shall the Director approve the use of a modified equation where the peak-particle velocity limits at 816.65(i)(2)(i) would be exceeded.
- (c) The Director may require a seismograph record of any or all blasts and may specify the location at which such measurements are taken.

SECTION 816.68 USE OF EXPLOSIVES: RECORDS OF BLASTING
OPERATIONS

12-17-84

A record of each blast, including seismograph reports, shall be retained at least three years and shall be available for inspection by the Director and the public on request. The record shall contain the following data:

- (a) Name of the operator conducting the blast.
- (b) Location, date, and time of the blast.
- (c) Name, signature, and certification number of the blaster-in-charge.
- (d) Identification, direction, and distance, in feet, from the nearest blast hole to the nearest dwelling, public building, school, church, community or institutional building outside the permit area, except those described in Section 816.65(j)(1)(2).
- (e) Weather conditions, including temperature, wind direction, and approximate velocity.
- (f) Type of material blasted.
- (g) Number of holes, burden, and spacing.
- (h) Diameter and depth of holes.
- (i) Types of explosives used.
- (j) Total weight of explosives used per hole.
- (k) Maximum weight of explosives detonated in an 8 millisecond period.
- (l) Initiation system.

- (m) Maximum number of holes detonated within any 8 millisecond period.
- (n) Type and length of stemming.
- (o) Mats and other protections used.
- (p) Type of delay detonator and delay periods used.
- (q) Sketch of the delay pattern.
- (r) Number of persons in the blasting crew.
- (s) Seismographic and airblast records, if required, which shall include –
 - (1) Type of instrument, sensitivity, and calibration signal or certification of annual calibration.
 - (2) Exact location of instrument and the date, time, and distance from the blast;
 - (3) Name of person and firm taking the reading;
 - (4) Name of the person and firm analyzing the seismographic record; and
 - (5) The vibration and/or airblast level recorded.
- (t) Sketches of the blast pattern including the number of holes, burden, spacing, decks, and delay pattern.
- (u) "Reasons and Conditions" for each unscheduled blast.

SECTION 816.71 DISPOSAL OF EXCESS SPOIL: GENERAL REQUIREMENTS
12-17-84

- (a) General. Excess spoil shall be placed in designated disposal areas within the permit area, in a controlled manner to –
 - (1) Minimize the adverse effects of leachate and surface water runoff from the fill on surface and ground waters;
 - (2) Ensure mass stability and prevent mass movement during and after construction; and

- (3) Ensure that the final fill is suitable for reclamation and revegetation compatible with the natural surrounding and the approved postmining land use.
- (b) Design certification
 - (1) The fill and appurtenant structures shall be designed using current, prudent engineering practices and shall meet any design criteria established by the Division. A qualified registered professional engineer experienced in the design of earth and rock fills shall certify the design of the fill and appurtenant structures.
 - (2) The fill shall be designed to attain a minimum long-term static safety factor of 1.5. The foundation and abutments of the fill must be stable under all conditions of construction.
- (c) Location. The disposal area shall be located on the most moderately sloping and naturally stable areas available, as approved by the Division and shall be placed, where possible, upon or above a natural terrace, bench, or berm, if such placement provides additional stability and prevents mass movement.
- (d) Foundation
 - (1) Sufficient foundation investigations, as well as any necessary laboratory testing of foundation material, shall be performed in order to determine the design requirements for foundation stability. The analyses of foundation conditions shall take into consideration the effect of underground mine workings, if any, upon the stability of the fill and appurtenant structures.
 - (2) Where the slope in the disposal area is in excess of 2.8h:1v (36 percent), or such lesser slope as may be designated by the Division based on local conditions, keyway cuts (excavations to stable bedrock) or rock toe buttresses shall be constructed to ensure stability of the fill. Where the toe of the spoil rests on a downslope, stability analyses shall be performed in accordance with 780.35(c) of this Chapter to determine the size of rock toe buttresses and keyway cuts.
- (e) Placement of excess spoil.
 - (2) All vegetative and organic material shall be removed from the disposal area prior to placement of the excess spoil. Topsoil shall be removed, segregated and stored or redistributed in accordance with 816.22. If approved by the Division organic material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation or increase the moisture retention of the soil.

- (3) Excess spoil shall be transported and placed in a controlled manner in horizontal lifts not exceeding 4 feet in thickness; concurrently compacted as necessary to ensure mass stability and to prevent mass movement during and after construction; graded so that surface and subsurface drainage is compatible with the natural surrounding; and covered with topsoil or substitute material in accordance with 816.22 of this Chapter. The Division may approve a design which incorporates placement of excess spoil in horizontal lifts other than 4 feet in thickness when it is demonstrated by the operator and certified by a qualified registered professional engineer that the design will ensure the stability of the fill and will meet all other applicable requirements.
- (4) The final configuration of the fill shall be suitable for the approved postmining land use. Terraces may be constructed on the outslope of the fill if required for stability, control of erosion, to conserve soil moisture, or to facilitate the approved postmining land use. The grade of the outslope between terrace benches shall not be steeper than 2h:1v (50 percent).
- (5) No permanent impoundments are allowed on the completed fill. Small depressions may be allowed by the Division if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation; and if they are not incompatible with the stability of the fill.
- (6) Excess spoil that is acid- or toxic-forming or combustible shall be adequately covered with nonacid, nontoxic and noncombustible material, or treated, to control the impact on surface and ground water in accordance with Section 816.41, to prevent sustained combustion, and to minimize adverse effects on plant growth and the approved postmining land use.

(f) Drainage Control.

- (1) If the disposal area contains springs, natural or manmade water courses, or wet weather seeps, the fill design shall include diversions and underdrains as necessary to control erosion, prevent water infiltration into the fill, and ensure stability.
- (2) Diversions shall comply with the requirements of 816.43.
- (3) Underdrains shall consist of durable rock or pipe, be designed and constructed using current, prudent engineering practices and meet any design criteria established by the Division. The underdrain system shall be designed to carry the anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area and shall be protected from piping and contamination by an adequate filter. Rock underdrains shall be constructed of durable nonacid-, nontoxic-forming rock (e.g., natural sand

and gravel, sandstone, limestone, or other durable rock) that does not slake in water or degrade to soil material, and which is free of coal, clay or other nondurable material. Perforated pipe underdrains shall be corrosion resistant and shall have characteristics consistent with the long-term life of the fill.

- (g) Surface area stabilization. Slope protection shall be provided to minimize surface erosion at the site. All disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.
- (h) Inspections. A qualified registered professional engineer, or other qualified professional specialist under the direction of the professional engineer, shall periodically inspect the fill during construction. The professional engineer or specialist shall be experienced in the construction of earth and rock fills.
 - (1) Such inspections shall be made at least quarterly throughout construction and during critical construction periods. Critical construction periods shall include at a minimum
 - (i) Foundation preparation, including the removal of all organic material and topsoil;
 - (ii) Placement of underdrains and protective filter systems;
 - (iii) Installation of final surface drainage systems; and
 - (iv) The final graded and revegetated fill. Regular inspections by the engineer or specialist shall also be conducted during placement and compaction of fill materials.
 - (2) The qualified registered professional engineer shall provide a certified report to the Division promptly after each inspection that the fill has been constructed and maintained as designed and in accordance with the approved plan and this Chapter. The report shall include appearances on instability, structural weakness, and other hazardous conditions.
 - (3)
 - (i) The certified report on the drainage system and protective filters shall include color photographs taken during and after construction, but before underdrains are covered with excess spoil. If the underdrain system is constructed in phases, each phase shall be certified separately.
 - (ii) Where excess durable rock spoil is placed in single or multiple lifts such that the underdrain system is constructed simultaneously with excess

spoil placement by the natural segregation of dumped materials, in accordance with Section 816.74 color photographs shall be taken of the underdrain as the underground system is being formed.

- (iii) The photographs accompanying each certified report shall be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site.
- (4) A copy of each inspection report shall be retained at or near the mine site.
 - (i) Coal mine waste. Coal mine waste may be disposed of in excess spoil fills if approved by the Division and, if such waste is
 - (A) Placed in accordance with Section 816.83;
 - (B) Nontoxic and nonacid forming; and
 - (C) Of the proper characteristics to be consistent with the design stability of the fill.
- (5) Underground disposal. Excess spoil may be disposed of in underground mine workings, but only in accordance with a plan approved by the Division and MSHA under Section 784.25 of this Chapter.

SECTION 816.72 DISPOSAL OF EXCESS SPOIL: VALLEY FILLS/HEAD-OF-HOLLOW FILLS

5-01-87

Valley fills and head-of-hollow fills shall meet the requirements of Section 816.71 and the additional requirements of this Section.

- (a) Drainage control.
 - (1) The top surface of the completed fill shall be graded such that the final slope after settlement will be toward properly designed drainage channels. Uncontrolled surface drainage may not be directed over the outslope of the fill.
 - (2) Runoff from areas above the fill and runoff from the surface of the fill shall be diverted into stabilized diversion channels designed to meet the requirements of Section 816.43 and, in addition, to safely pass the runoff from a 100-year, 6-hour precipitation event.

- (b) Rock-core chimney drains. A rock-core chimney drain may be used in a head-of-hollow fill instead of the underdrain and surface diversion system normally required, as long as the fill is not located in an area containing intermittent or perennial streams. A rock-core chimney drain may be used in a valley fill if the fill does not exceed 250,000 cubic yards of material and upstream drainage is diverted around the fill. The alternative rock-core chimney drain system shall be incorporated into the design and construction of the fill as follows
- (1) The fill shall have, along the vertical projection of the main buried stream channel or rill, a vertical core of durable rock at least 16 feet thick which shall extend from the toe of the fill to the head of the fill, and from the base of the fill to the surface of the fill. A system of lateral rock underdrains shall connect this rock core to each area of potential drainage or seepage in the disposal area. The underdrain system and rock core shall be designed to carry the anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area. Rocks used in the rock core and underdrains shall meet the requirements of Section 816.71(f).
 - (2) A filter system to ensure the proper long-term functioning of the rock core shall be designed and constructed using current, prudent engineering practices.
 - (3) Grading may drain surface water away from the outslope of the fill and toward the rock core. In no case, however, may intermittent or perennial streams be diverted into the rock core. The maximum slope of the top of the fill shall be 33h:1v (3 percent). A drainage pocket may be maintained at the head of the fill during and after construction, to intercept surface runoff and discharge the runoff through or over the rock drain, if stability of the fill is not impaired. In no case shall this pocket or sump have a potential capacity for impounding more than 10,000 cubic feet of water. Terraces on the fill shall be graded with a 3 to 5 percent grade toward the fill and 1 percent slope toward the rock core.

SECTION 816.73

DISPOSAL OF EXCESS SPOIL: DURABLE ROCK FILLS

5-01-87

The Division may approve the alternative method of disposal of excess durable rock spoil by gravity placement in single or multiple lifts, provided the following conditions are met

- (a) Except as provided in this Section, the requirements of Section 816.71 are met.
- (b) The excess spoil consist of at least 80 percent, by volume, durable, nonacid- and nontoxic-forming rock (e.g., sandstone or limestone) that does not slake in water and will not degrade to soil material. Where used, noncemented clay shale, clay spoil, soil or other nondurable excess spoil materials shall be mixed with excess durable rock spoil in a

controlled manner such that no more than 20 percent of the fill volume determined by tests performed by a registered engineer and approved by the Division is not durable rock.

- (c) A qualified registered professional engineer certifies that the design will ensure the stability of the fill and meet all other requirements.
- (d) The fill is designed to attain a minimum long-term static safety factor of 1.5, and an earthquake safety factor of 1.1.
- (e) The underdrain system may be constructed simultaneously with excess spoil placement by the natural segregation of dumped material, provided the resulting underdrain system is capable of carrying anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area and the other requirements for drainage control are met.
- (f) Surface water runoff from areas adjacent to and above the fill is not allowed to flow onto the fill and is diverted into stabilized diversion channel designed to meet the requirements of Section 816.43 and to safely pass the runoff from a 100-year, 6-hour precipitation event.

SECTION 816.74

DISPOSAL OF EXCESS SPOIL: PRE-EXISTING BENCHES

5-27-99

- (a) The Division may approve the disposal of excess spoil through placement on a pre-existing bench if the affected portion of the pre-existing bench is permitted and the standards set forth in Sections 816.102(c), (e) - (h), and (j), and the requirements of this Section are met.
- (b) All vegetation and organic materials shall be removed from the affected portion of the preexisting bench prior to placement of the excess spoil. Any available topsoil on the bench shall be removed, stored and redistributed in accordance with Section 816.22 of this part. Substitute or supplemental materials may be used in accordance with Sec. 816.22(b) of this part.
- (c) The fill shall be designed, and constructed using current, prudent engineering practices. The design will be certified by a registered professional engineer. The spoil shall be placed on the solid portion of the bench in a controlled manner and concurrently compacted as necessary to attain a long-term static safety factor of 1.3 for all portions of the fill. Any spoil deposited on any fill portion of the bench will be treated as excess spoil fill under Sec. 816.71.
- (d) The pre-existing bench shall be backfilled and graded to –

- (1) Achieve the most moderate slope possible which does not exceed the angle of repose, and
 - (2) Eliminate the highwall to the maximum extent technically practical.
 - (3) Minimize erosion and water pollution both on and off the site; and
 - (4) If the disposal area contains springs, natural or manmade water courses, or wet weather seeps, the fill design shall include diversions and underdrains as necessary to control erosion, prevent water infiltration into the fill, and ensure stability.
- (e) All disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.
- (f) Permanent impoundments may not be constructed on preexisting benches backfilled with excess spoil under this rule.
- (g) Final configuration of the backfill must be compatible with the natural drainage patterns and the surrounding area, and support the approved postmining land use.
- (h) Disposal of excess spoil from an upper actively mined bench to a lower pre-existing bench by means of gravity transport may be approved by the Division provided that --
- (1) The gravity transport courses are determined on site-specific basis by the operator as part of the permit application and approved by the Division to minimize hazards to health and safety and to ensure that damage will be minimized between the benches, outside the set course and downslope of the lower bench should excess spoil accidentally move;
 - (2) All gravity transported excess spoil, including that excess spoil immediately below the gravity transport courses and any pre-existing spoil that is disturbed, is rehandled and placed in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and to prevent mass movement, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings and to ensure a minimum long-term static safety factor of 1.3. Excess spoil on the bench prior to the current mining operation that is not disturbed need not be rehandled except where necessary to ensure stability of the fill;
 - (3) A safety berm is constructed on the solid portion of the lower bench prior to gravity transport of the excess spoil. Where there is insufficient material on the

lower bench to construct a safety berm, only that amount of excess spoil necessary for the construction of the berm may be gravity transported to the lower bench prior to construction of the berm.

- (4) Excess spoil shall not be allowed on the downslope below the upper bench except on designated gravity transport courses properly prepared according to Section 816.22. Upon completion of the fill, no excess spoil shall be allowed to remain on the designated gravity transport course between the two benches and each transport course shall be reclaimed in accordance with the requirements of this part.

SECTION 816.79-S PROTECTION OF UNDERGROUND MINING

5-01-87

(No surface mining activities shall be conducted closer than 500 feet to any point of either an active or abandoned underground mine, except to the extent that –

- (a) The activities result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public; and
- (b) The nature, timing, and sequence of the activities that propose to mine closer than 500 feet to an active underground mine are jointly approved by the Division, the Mine Safety and Health Administration, and the State agency, if any, responsible for the safety of underground mine workers.)

SECTION 816.81 COAL MINE WASTE: GENERAL REQUIREMENTS

12-05-97

- (a) General. All coal mine waste disposed of in an area other than the mine workings or excavations shall be placed in new or existing disposal areas within a permit area, which are approved by the Division for this purpose. Coal mine waste shall be hauled or conveyed and placed for final placement in a controlled manner to –
 - (1) Minimize adverse effects of leachate and surface water runoff on surface and groundwater quality and quantity;
 - (2) Ensure mass stability and prevent mass movement during and after construction;
 - (3) Ensure that the final disposal facility is suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use;
 - (4) Not create a public hazard; and

- (5) Prevent combustion.
- (b) Coal mine waste material from activities located outside a permit area may be disposed of in the permit area only if approved by the Division. Approval shall be based upon a showing that such disposal will be in accordance with the standards of this Section.
- (c) Design certification
 - (1) The disposal facility shall be designed using current, prudent engineering practices and shall meet any design criteria established by the Division. A qualified registered professional engineer, experienced in the design of similar earth and waste structures, shall certify the design of the disposal facility.
 - (2) The disposal facility shall be designed to attain a minimum long-term static safety factor of 1.5. The foundation and abutments must be stable under all conditions of construction.
- (d) Foundation. Sufficient foundation investigations, as well as any necessary laboratory testing of foundation material, shall be performed in order to determine the design requirements for foundation stability. The analyses of the foundation conditions shall take into consideration the effect of underground mine workings, if any, upon the stability of the disposal facility.
- (e) Emergency procedures. If any examination or inspection discloses that a potential hazard exists, the Division shall be informed promptly of the findings and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the Division shall be notified immediately. The Division shall then notify the appropriate agencies that other emergency procedures are required to protect the public.
- (f) Underground disposal. Coal mine waste may be disposed of in underground mine workings, but only in accordance with a plan approved by the Division and MSHA under Section 784.25 of this Chapter.

SECTION 816.83

COAL MINE WASTE: REFUSE PILES

5-01-87

Refuse piles shall meet the requirements of Section 816.81, the additional requirements of this Section.

- (a) Drainage control.
 - (1) If the disposal area contains springs, natural or manmade water courses, or wet

weather seeps, the design shall include diversions and underdrains as necessary to control erosion, prevent water infiltration into the disposal facility and ensure stability.

- (2) Uncontrolled surface drainage may not be diverted over the outslope of the refuse piles. Runoff from the areas above the refuse pile and runoff from the surface of the refuse pile shall be diverted into stabilized diversion channels designed to meet the requirements of Section 816.43 to safely pass the runoff from a 100-year, 6-hour precipitation event. Runoff diverted from undisturbed areas need not be commingled with runoff from the surface of the refuse pile.
 - (3) Underdrains shall comply with the requirements of Section 816.71(f)(3).
- (b) Surface area stabilization. Slope protection shall be provided to minimize surface erosion at the site. All disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.
- (c) Placement.
- (1) All vegetative and organic materials shall be removed from the disposal area prior to placement of coal mine waste. Topsoil shall be removed, segregated and stored or redistributed in accordance with Section 816.22. If approved by the Division, organic material may be used as mulch, or may be included in the topsoil to control erosion, promote growth of vegetation or increase the moisture retention of the soil.
 - (2) The final configuration of the refuse pile shall be suitable for the approved postmining land use. Terraces may be constructed on the outslope of the refuse pile if required for stability, control of erosion, conservation of soil moisture, or facilitation of the approved postmining land use. The grade of the outslope between terrace benches shall not be steeper than 2h:1v (50 percent).
 - (3) No permanent impoundments shall be allowed on the completed refuse pile. Small depressions may be allowed by the Division if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation, and if they are not incompatible with stability of the refuse pile.
 - (4) Following final grading of the refuse pile, the coal mine waste shall be covered with a minimum of four (4) feet of the best available, nontoxic and noncombustible material, in a manner that does not impede drainage from the underdrains. The Division may allow less than four (4) feet of cover material based on physical and chemical analyses which show that the requirements of Sections 816.111 through 816.116 will be met.

- (d) Inspections. A qualified registered professional engineer, or other qualified professional specialist under the direction of the professional engineer, shall inspect the refuse pile during construction. The professional engineer or specialist shall be experienced in the construction of similar earth and waste structures.
- (1) Such inspections shall be made at least quarterly throughout construction and during critical construction periods. Critical construction periods shall include at a minimum:
- (i) Foundation preparation including the removal of all organic material and topsoil;
 - (ii) Placement of underdrains and protective filter systems;
 - (iii) Installation of final surface drainage systems; and
 - (iv) The final graded and revegetated facility. Regular inspections by the engineer or specialist shall also be conducted during placement and compaction of coal mine waste materials. More frequent inspections shall be conducted if a danger of harm exists to the public health and safety or the environment. Inspections shall continue until the refuse pile has been finally graded and revegetated or until a later time as required by the Division.
- (2) The qualified registered professional engineer shall provide a certified report to the Division promptly after each inspection that the refuse pile has been constructed and maintained as designed and in accordance with the approved plan and this Chapter. The report shall include appearances of instability, structural weakness, and other hazardous conditions.
- (3) The certified report on the drainage system and protective filters shall include color photographs taken during and after construction, but before underdrains are covered with coal mine waste. If the underdrain system is constructed in phases, each phase shall be certified separately. The photographs accompanying each certified report shall be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site.
- (4) A copy of each inspection report shall be retained at or near the mine site.

New and existing impounding structures constructed of coal mine waste or intended to impound coal mine waste shall meet the requirements of Section 816.81.

- (a) Coal mine waste shall not be used for construction of impounding structures unless it has been demonstrated to the Division that the stability of such a structure conforms to the requirements of this part and the use of coal mine waste will not have a detrimental effect on downstream water quality or the environment due to acid seepage through the impounding structure. The stability of the structure and the potential act of acid mine seepage through the impounding structure shall be discussed in detail in the design plan submitted to the Division in accordance with Section 780.25 of this Chapter.
- (b)
 - (1) Each impounding structure constructed of coal mine waste or intended to impound coal mine waste shall be designed, constructed and maintained in accordance with Section 816.49(a) and (c). Such structures may not be retained permanently as part of the approved postmining land use.
 - (2) Each impounding structure constructed of coal mine waste or intended to impound coal mine waste which meets the criteria of 30CFR 77.216(a) shall have sufficient spillway capacity to safely pass, adequate storage capacity to safely contain, or a combination of storage capacity and spillway capacity to safely control, the probable maximum precipitation (PMP) of a 6-hour precipitation event, or greater event as specified by the Director.
- (c) Spillways and outlet works shall be designed to provide adequate protection against erosion and corrosion. Inlets shall be protected against blockage.
- (d) Drainage control. Runoff from areas above the disposal facility or runoff from the surface of the facility that may cause instability or erosion of the impounding structure shall be diverted into stabilized diversion channels designed to meet the requirements of Section 816.43 and designed to safely pass the runoff from a 100-year, 6-hour design precipitation event.
- (e) Impounding structures constructed of or impounding coal mine waste shall be designed so that at least 90 percent of the water stored during the design precipitation event can be removed within a 10-day period.
- (f) For an impound structure constructed of or impounding coal mine waste, at least 90 percent of the water stored during the design precipitation event shall be removed within the 10- day period following the design precipitation event.

SECTION 816.87

COAL MINE WASTE: BURNING AND BURNED WASTE UTILIZATION

- (a) Coal mine waste fires shall be extinguished by the person who conducts the surface mining activities, in accordance with a plan approved by the Division and the Mine Safety and Health Administration. The plan shall contain, at a minimum, provisions to ensure that only those persons authorized by the operator, and who have an understanding of the procedures to be used, shall be involved in the extinguishing operations.
- (b) No burning or burned coal mine waste shall be removed from a permitted disposal area without a removal plan approved by the Division. Consideration shall be given to potential hazards to persons working or living in the vicinity of the structure.

SECTION 816.89 DISPOSAL OF NONCOAL MINE WASTES

12-05-97

- (a) Noncoal mine wastes including, but not limited to grease, lubricants, paints, flammable liquids, garbage, abandoned mining machinery, lumber and other combustible materials generated during mining activities shall be placed and stored in a controlled manner in a designated portion of the permit area. Placement and storage shall ensure that leachate and surface runoff do not degrade surface or ground water, that fires are prevented, and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings.
- (b) Final disposal of noncoal mine wastes shall be in a designated disposal site in the permit area or a State-approved solid waste disposal area. Disposal sites in the permit area shall be designed and constructed to ensure that leachate and drainage from the noncoal mine waste area does not degrade surface or underground water. Wastes shall be routinely compacted and covered to prevent combustion and wind-borne waste. When the disposal is completed, a minimum of two (2) feet of soil cover shall be placed over the site, slopes stabilized, and revegetation accomplished in accordance with 816.111 through 816.116. Operation of the disposal site shall be conducted in accordance with all local, State and Federal requirements.
- (c) At no time shall any noncoal waste be deposited in a refuse pile or impounding structure, nor shall an excavation for a noncoal mine waste disposal site be located within eight (8) feet any coal outcrop or coal storage area.

SECTION 816.95 STABILIZATION OF SURFACE AREAS

10-29-92

- (a) Fugitive dust. All exposed surface areas shall be protected and stabilized to effectively control erosion and air pollution attendant to erosion.

- (b) Rills and gullies, which form in areas which have been regraded and topsoiled and which either--
 - (1) Disrupt the approved postmining land use or the reestablishment of the vegetative cover, or
 - (2) Cause or contribute to a violation of water quality standards for receiving streams; shall be filled, regraded, or otherwise stabilized; topsoil shall be replaced; and the areas shall be reseeded or replanted.
- (c) Additional measures. Where the Director determines that application of fugitive dust control measures listed in paragraph (b) of this Section is inadequate, the Director may require additional measures and practices as necessary.
- (d) Monitoring. Air monitoring equipment shall be installed and monitoring shall be conducted in accordance with the air monitoring plan required under Section (780.15) or [784.26] and approved by the Director.

SECTION 816.97 PROTECTION OF FISH, WILDLIFE, AND RELATED ENVIRONMENTAL VALUES

11-14-89

- (a) The operator shall to the extent possible using the best technology currently available, minimize disturbances and adverse impacts on fish, wildlife, and related environmental values and shall achieve enhancement of such resources where practicable.
- (b) Endangered and threatened species. No surface mining activity shall be conducted which is likely to jeopardize the continued existence of endangered or threatened species listed by the Secretary or which is likely to result in the destruction or adverse modification of designated critical habitats of such species in violation of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.). The operator shall promptly report to the Division any state- or federally- listed endangered or threatened species within the permit area of which the operator becomes aware. Upon notification, the Division shall consult with appropriate State and Federal fish and wildlife agencies and, after consultation, shall identify whether, and under what conditions, the operator may proceed.
- (c) Bald and golden eagles. No surface mining activity shall be conducted in a manner which would result in the unlawful taking of a bald or golden eagle, its nest, or any of its eggs. The operator shall promptly report to the Division any golden or bald eagle nest within the permit area of which the operator becomes aware. Upon notification, the Division shall consult with the U.S. Fish and Wildlife Service and also, where appropriate, the Arkansas Game and Fish Commission and, after consultation, shall identify whether, and under what conditions, the operator may proceed.

- (d) Nothing in this chapter shall authorize the taking of an endangered or threatened species or a bald or golden eagle, its nest, or any of its eggs in violation of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 et seq., or the Bald Eagle Protection Act, as amended, 16 U.S.C. 668 et seq.
- (e) Each operator shall, to the extent possible using the best technology currently available-
 - (1) Ensure that electric powerlines and other transmission facilities used for, or incidental to, surface mining activities on the permit area are designed and constructed to minimize electrocution hazards to raptors, except where the Division determines that such requirements are unnecessary;
 - (2) Locate and operate haul and access roads so as to avoid or minimize impacts on important fish and wildlife species or other species protected by State or Federal law;
 - (3) Design fences, overland conveyors, and other potential barriers to permit passage for large mammals, except where the Division determines that such requirements are unnecessary; and
 - (4) Fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials.
- (f) Wetlands and habitats of unusually high value for fish and wildlife. The operator conducting surface mining activities shall avoid disturbances to, enhance where practicable, restore, or replace, wetlands, and riparian vegetation along rivers and streams and bordering ponds and lakes. Surface mining activities shall avoid disturbances to, enhance where practicable, or restore, habitats of unusually high value for fish and wildlife.
- (g) Where fish and wildlife habitat is to be a postmining land use, the plant species to be used on reclaimed areas shall be selected on the basis of the following criteria:
 - (1) Their proven nutritional value for fish or wildlife.
 - (2) Their use as cover for fish or wildlife.
 - (3) Their ability to support and enhance fish or wildlife habitat after the release of performance bonds. The selected plants shall be grouped and distributed in a manner which optimizes edge effect, cover, and other benefits to fish and wildlife.
- (h) Where cropland is to be the postmining land use, and where appropriate for wildlife- and crop-management practices, the operator shall intersperse the fields with trees, hedges, or fence rows throughout the harvested area to break up large of monoculture and to diversify

habitat types for birds and other animals.

- (i) Where residential, public service, or industrial uses are to be the postmining land use, and where consistent with the approved postmining land use, the operator shall intersperse reclaimed lands with greenbelts utilizing species of grass, shrubs, and trees useful as food and cover for wildlife.

SECTION 816.99-S

SLIDES AND OTHER DAMAGE

5-29-80

- (a) (An undisturbed natural barrier shall be provided beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for such distance as may be determined by the Director as is needed to assure stability. The barrier shall be retained in place to prevent slides and erosion.
- (b) At any time a slide occurs which may have a potential adverse affect on public property, health, safety, or the environment, the person who conducts the (surface mining activities) [*underground mining activities*] shall notify the Director by the fastest available means and comply with any remedial measures required by the Director.)

SECTION 816.100

CONTEMPORANEOUS RECLAMATION

5-29-80

Reclamation efforts, including, but not limited to, backfilling, grading, topsoil replacement and revegetation, of all land that is disturbed by (surface mining activities) [*underground mining activities*] shall occur as contemporaneously as practicable with mining operations.

SECTION 816.101-S

BACKFILLING AND GRADING: GENERAL REQUIREMENTS

5-29-80

- (a) (Timing of backfilling and grading.
 - (1) Contour mining. Rough backfilling and grading shall follow coal removal by not more than 60 days or 1,500 linear feet. The Director may grant additional time for rough backfilling and grading if the permittee can demonstrate, through a detailed written analysis under Section 780.18(b)(3), that additional time is necessary.
 - (2) Open pit mining with thin overburden. Rough backfilling and grading shall occur in accordance with the time schedule approved by the regulatory authority, on the basis of the materials submitted under Section 780.18(b)(3), which shall specifically establish in stated increments the period between removal of coal and completion of backfilling and grading.
 - (3) Area strip mining. Rough backfilling and grading shall be completed within 180 days following coal removal and shall not be more than four spoil ridges behind the pit being worked, the spoil from the active pit being considered the first ridge. The Director may grant additional time for rough backfilling and grading, if the permittee can demonstrate, through a detailed written analysis under Section 780.18(b)(3), that additional time is necessary.

(b) Method for backfilling and grading.

- (1) Except as specifically exempted in this Subchapter, all disturbed areas shall be returned to their approximate original contour. All spoil shall be transported, backfilled, compacted – where advisable to insure stability or to prevent leaching – and graded to eliminate all highwalls, spoil piles, and depressions.
- (2) Backfilled material shall be placed to minimize adverse effects on ground water, minimize off-site effects, and to support the approved postmining land use.
- (3) The postmining graded slopes need not be of uniform slope.
- (4) Cut-and-fill terraces may be used only in those situations expressly identified in Section 816.102.)

SECTION 816.101-U BACKFILLING AND GRADING: GENERAL REQUIREMENTS

10-29-92

(a) *[Surface areas disturbed incident to underground mining activities shall be backfilled and graded in accordance with the time schedule approved by the Director as a condition of the permit.]*

(b) *Backfilling and grading.*

- (1) *Except as provided in Section 816.102(g), all areas affected by surface operations shall be returned to approximate original contour. All spoil shall be transported, backfilled, and compacted -where advisable to ensure stability or to prevent leaching- and graded to eliminate all highwalls, spoil piles, and depressions.]*

SECTION 816.102 BACKFILLING AND GRADING: GENERAL GRADING REQUIREMENTS

5-27-99

(a) Disturbed areas shall be backfilled and graded to--

- (1) Achieve the approximate original contour, except as provided in Paragraph (k) of this Section;
- (2) Eliminate all highwalls, spoil piles, and depressions, except as provided in Paragraph (h) and in (Paragraph (k)(3)(iii) of this Section;) *[Paragraph (k)(2) of*

this Section;]

- (3) Achieve a postmining slope that does not exceed either the angle of repose or such lesser slope as is necessary to achieve a minimum long-term static safety factor of 1.3 and to prevent slides;
 - (4) Minimize erosion and water pollution both on and off the site; and
 - (5) Support the approved postmining land use.
- (b) Spoil, *[except as provided in Paragraph (1) of this Section, and]* except excess spoil disposed of in accordance with Sections 816.71-816.74, shall be returned to the mined-out area.
- (c) Spoil and waste materials shall be compacted where advisable to ensure stability or to prevent leaching of toxic materials.
- (d) Spoil may be placed on the area outside the mined-out *[surface]* area in nonsteep slope areas to restore the approximate original contour by blending the spoil into the surrounding terrain if the following requirements are met:
- (1) All vegetative and organic material shall be removed from the area.
 - (2) The topsoil on the area shall be removed, segregated, stored, and redistributed in accordance with Section 816.22.
 - (3) The spoil shall be backfilled and graded on the area in accordance with the requirements of this Section.
- (e) Disposal of coal processing waste and underground development waste in the mined-out *[surface]* area shall be in accordance with Sections 816.81 and 816.83, except that a long-term static safety factor of 1.3 shall be achieved.
- (f) Exposed coal seams, acid- and toxic-forming materials, and combustible materials exposed, used, or produced during mining shall be adequately covered with nontoxic and noncombustible material, or treated, to control the impact on surface and ground water in accordance with Section 816.48, to prevent sustained combustion, and to minimize adverse effects on plant growth and the approved postmining land use.
- (g) Cut-and-fill terraces may be allowed by the Director where--
- (1) Needed to conserve soil moisture, ensure stability, and control erosion on final-graded slopes, if the terraces are compatible with the approved postmining land use; or

- (2) Specialized grading, foundation conditions, or roads are required for the approved postmining land use, in which case the final grading may include a terrace of adequate width to ensure the safety, stability, and erosion control necessary to implement the postmining land-use plan.
- (h) Small depressions may be constructed if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation.
- (i) Permanent impoundments may be approved if they meet the requirements of Sections 816.49 and 816.56 and if they are suitable for the approved postmining land use.
- (j) Preparation of final-graded surfaces shall be conducted in a manner that minimizes erosion and provides a surface for replacement of topsoil that will minimize slippage.
- (k) (The postmining slope may vary from the approximate original contour when--
 - (1) The standards for thin overburden in Section 816.104 are met;
 - (2) The standards for thick overburden in Section 816.105 are met; or
 - (3) Approval is obtained from the Director for--
 - (i) Mountaintop removal operations in accordance with Section 785.14 of this Chapter;
 - (ii) A variance from approximate original contour requirements in accordance with Section 785.16 of this Chapter; or
 - (iii) Incomplete elimination of highwalls in previously mined areas in accordance with Section 816.107.)
- (k) *[The postmining slope may vary from the approximate original contour when approval is obtained from the Director for--*
 - (1) *A variance from approximate original contour requirements in accordance with Section 785.16 of this Chapter; or*
 - (2) *Incomplete elimination of highwalls in previously mined areas in accordance with Section 816.107.]*
- (l) *[Regrading of settled and revegetated fills to achieve approximate original contour at the conclusion of underground mining activities shall not be required if the conditions of Paragraph (l)(1) or (l)(2) of this Section are met.*

- (1) (i) *Settled and revegetated fills shall be composed of spoil or nonacid- or nontoxic-forming underground development waste.*
- (ii) *The spoil or underground development waste shall not be located so as to be detrimental to the environment, to the health and safety of the public, or to the approved postmining land use.*
- (iii) *Stability of the spoil or underground development waste shall be demonstrated through standard geotechnical analysis to be consistent with backfilling and grading requirements for material on the solid bench (1.3 static safety factor) or excess spoil requirements for material not placed on a solid bench (1.5 static safety factor).*
- (iv) *The surface of the spoil or underground development waste shall be vegetated according to Section 816.116, and surface runoff shall be controlled in accordance with Section 816.43.*
- (2) *If it is determined by the Director that disturbance of the existing spoil or underground development waste would increase environmental harm or adversely affect the health and safety of the public, the Director may allow the existing spoil or underground development waste pile to remain in place. The Director may require stabilization of such spoil or underground development waste in accordance with the requirements of Paragraphs (1)(1)(i)-(1)(1)(iv) of this Section.]*

SECTION 816.104-S BACKFILLING AND GRADING: THIN OVERBURDEN

5-27-99

- (a) (Definition. Thin overburden means insufficient spoil and other waste materials available from the entire permit area to restore the disturbed area to its approximate original contour. Insufficient spoil and other waste materials occur where the overburden thickness times the swell factor, plus the thickness of other available waste materials, is less than the combined thickness of the overburden and coal bed prior to removing the coal, so that backfilling and grading the surface configuration of the reclaimed area would not:
 - (1) Closely resemble the surface configuration of the land prior to mining; or
 - (2) Blend into and complement the drainage pattern of the surrounding terrain.
- (b) Performance standards. Where thin overburden occurs within the permit area, the permittee at a minimum shall:
 - (1) Use all spoil and other waste materials available from the entire permit area to attain the lowest practicable grade, but not more than the angle of repose; and

- (2) Meet the requirements of Sections. 816.102(a)(2) through (j) of this part.)

SECTION 816.105-S BACKFILLING AND GRADING: THICK OVERBURDEN

5-27-99

- (a) (Definition. Thick overburden means more than sufficient spoil and other waste materials available from the entire permit area to restore the disturbed area to its approximate original contour. More than sufficient spoil and other waste materials occur where the overburden thickness times the swell factor exceeds the combined thickness of the overburden and coal bed prior to removing the coal, so that after backfilling and grading the surface configuration of the reclaimed area would not:
 - (1) Closely resemble the surface configuration of the land prior to mining; or
 - (2) Blend into and complement the drainage pattern of the surrounding terrain.
- (b) Performance standards. Where thick overburden occurs within the permit area, the permittee at a minimum shall:
 - (1) Restore the approximate original contour and then use the remaining spoil and other waste materials to attain the lowest practicable grade, but not more than the angle of repose;
 - (2) Meet the requirements of Sections. 816. 102(a)(2) through (j) of this part; and
 - (3) Dispose of any excess spoil in accordance with Sections. 816.71 through 816.74 of this part.)

SECTION 816.106 BACKFILLING AND GRADING: STEEP SLOPES

5-27-99

- (a) Surface mining activities on steep slopes shall be conducted so as to meet the requirements of Sections 816.102-816.107, and the requirements of this Section except where mining is conducted on flat or gently rolling terrain with an occasional steep slope through which the mining proceeds and leaves a plain or predominantly flat area or where operations are conducted in accordance with Part 824 of this Chapter.
- (b) The following materials shall not be placed on the downslope:
 - (1) Spoil.
 - (2) Waste materials of any type.

- (3) Debris, including that from clearing and grubbing.
 - (4) Abandoned or disabled equipment.
- (c) Land above the highwall shall not be disturbed unless the Director finds that this disturbance will facilitate compliance with the environmental protection standards of this Subchapter and the disturbance is limited to that necessary to facilitate compliance.
- (d) Woody materials shall not be buried in the backfilled area unless the Director determines that the proposed method for placing woody material within the backfill will not deteriorate the stable condition of the backfilled area.

- (4) Abandoned or disabled equipment.

- (c) Land above the highwall shall not be disturbed unless the Director finds that this disturbance will facilitate compliance with the environmental protection standards of this Subchapter and the disturbance is limited to that necessary to facilitate compliance.
- (d) Woody materials shall not be buried in the backfilled area unless the Director determines that the proposed method for placing woody material within the backfill will not deteriorate the stable condition of the backfilled area.

SECTION 816.107 BACKFILLING AND GRADING PREVIOUSLY MINED AREAS 5-27-99

Remining operations on previously mined areas that contain a pre-existing highwall shall comply with the requirements of Sections 816.101 through 816.107, except as provided in this Section.

- (a) The requirements of Section 816.102(a)(1) and (a)(2) requiring the elimination of highwalls shall not apply to remining operations where the volume of all reasonably available spoil is demonstrated in writing to the Division to be insufficient to completely backfill the reaffected or enlarged highwall. The highwall shall be eliminated to the maximum extent technically practical in accordance with the following criteria:
- (1) All spoil generated by the remining operation and any other reasonably available spoil shall be used to backfill the area. Reasonably available spoil in the immediate vicinity of the remining operation shall be included in the permit area.
 - (2) The backfill shall be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and longterm stability.
 - (3) Any highwall remnant shall be stable and not pose a hazard to the public health and safety or to the environment. The operator shall demonstrate, to the satisfaction of the Division, that the highwall remnant is stable.
 - (4) Spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbance will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.

- (1) All spoil generated by the remining operation and any other reasonably available spoil shall be used to backfill the area. Reasonably available spoil in the immediate vicinity of the remining operation shall be included in the permit area.
- (2) The backfill shall be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and longterm stability.
- (3) Any highwall remnant shall be stable and not pose a hazard to the public health and safety or to the environment. The operator shall demonstrate, to the satisfaction of the Division, that the highwall remnant is stable.
- (4) Spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbance will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.

- (a) The permittee shall establish on regraded areas and on all other disturbed areas except water areas and surface areas of roads that are approved as part of the postmining land use, a vegetative cover that is in accordance with the approved permit and reclamation plan and that is
 - (1) Diverse, effective, and permanent
 - (2) Comprised of species native to the area, or of introduced species where desirable and necessary to achieve the postmining land use and approved by the Division.
 - (3) At least equal in extent of cover to the natural vegetation of the area; and
 - (4) Capable of stabilizing the soil surface from erosion.
- (b) The reestablished plant species shall
 - (1) Be compatible with the approved postmining land use;
 - (2) Have the same seasonal characteristics of growth as the original vegetation;
 - (3) Be capable of self-regeneration and plant succession;
 - (4) Be compatible with the plant and animal species of the area; and
 - (5) Meet the requirements of applicable State and Federal seed, poisonous and noxious plant, and introduced species laws or regulations.
- (c) The Division may grant exception to the requirements of paragraphs (b)(2) and (3) of this Section when the species are necessary to achieve a quick-growing, temporary, stabilizing cover, and measures to establish permanent vegetation are included in the approved permit and reclamation plan.
- (d) When the Division approves a cropland postmining-land use, the Division may grant exception to the requirements of paragraphs (a)(1), (3), (b)(2), and (3) of this Section. The requirements of Part 823 of this chapter apply to areas identified as prime farmland.

SECTION 816.113

REVEGETATION: TIMING

5-29-80

Seeding and planting of disturbed areas shall be conducted during the first normal period for favorable planting conditions after final preparation. The normal period for favorable planting shall be that planting time generally accepted locally for the type of plant materials selected. When necessary to effectively control erosion, any disturbed area shall be seeded and planted, as contemporaneously as practicable with the completion of backfilling and grading, with a temporary cover of small grains, grasses, or legumes until a permanent cover is established.

SECTION 816.114

REVEGETATION: MULCHING AND OTHER SOIL STABILIZING PRACTICES

5-29-80

- (a) Suitable mulch and other soil stabilizing practices shall be used on all regraded and topsoiled areas to control erosion, promote germination of seeds, or increase the moisture-retention capacity of the soil. The Director may, on a case-by-case basis, suspend the requirement for mulch, if the permittee can demonstrate that alternative procedures will achieve the requirements of 816.116 and do not cause or contribute to air or water pollution.
- (b) When required by the Director, mulches shall be mechanically or chemically anchored to the soil surface to assure effective protection of the soil and vegetation.
- (c) Annual grasses and grains may be used alone, as in situ mulch, or in conjunction with another mulch, when the Director determines that they will provide adequate soil erosion control and will later be replaced by perennial species approved for the postmining land use.
- (d) Chemical soil stabilizers alone, or in combination with appropriate mulches, may be used in conjunction with vegetative covers approved for the postmining land use.

SECTION 816.116

REVEGETATION: STANDARDS FOR SUCCESS

5-27-99

- (a) Success of revegetation shall be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in natural vegetation of the area, and the general requirements of Section 816.111.
 - (1) Standards for success and statistically valid sampling techniques for measuring success shall be selected by the Division.

- (2) Standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the success standard. The sampling techniques for measuring success shall use a 90-percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error).
- (b) Standards for success shall be applied in accordance with the approved postmining land use and, at a minimum, the following conditions
- (1) For areas developed for use as grazing and pasture land, the ground cover and production of living plants on the revegetated area shall be at least equal to that of a reference area or shall comply with the criteria contained in the policy adopted by the Division entitled Phase III Revegetation Success Standards for Pasture and Previously Mined Areas.
 - (2) For areas developed for use as cropland, crop production on the revegetated area shall be at least equal to that of a reference area or shall comply with the criteria contained in the policy adopted by the Division entitled Phase III Revegetation Success Standards for Cropland.
 - (3) For areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products, success of vegetation shall be determined on the basis of tree and shrub stocking and vegetative ground cover. Such parameters are described as follows:
 - (i) Minimum stocking and planting arrangements shall be specified by the Division on the basis of local and regional conditions and after consultation with and approval by the Arkansas Forestry Commission and the Arkansas Game and Fish Commission. Consultation and approval shall occur on a permit-specific basis.
 - (ii) Trees and shrubs that will be used in determining the success of stocking and the adequacy of plant arrangement shall have utility for the approved postmining land use. At the time of bond release, such trees and shrubs shall be healthy, and at least 80 percent shall have been in place for 60 percent of the applicable minimum period of responsibility. No trees and shrubs in place for less than two growing seasons shall be counted in determining stocking adequacy.
 - (iii) Vegetative ground cover shall not be less than that required to achieve approved postmining land use.

- (iv) Vegetation success shall comply with the criteria contained in the policies adopted by the Division entitled Phase III Revegetation Success Standards for Forest Products, or Phase III Revegetation Success Standards for Recreation and Wildlife Habitat.
 - (4) For areas to be developed for industrial, commercial, or residential use less than two years after regrading is completed, the vegetative ground cover shall not be less than that required to control erosion and shall comply with the criteria contained in the policy adopted by the Division entitled Phase III Revegetation Success Standards for Industrial, Commercial, and Residential Revegetation.
 - (5) For areas previously disturbed by mining that were not reclaimed to the requirements of this subchapter and that are remined or otherwise redisturbed by surface coal mining operations, as a minimum, the vegetative ground cover shall be not less than the ground cover existing before redisturbance and shall be adequate to control erosion. This vegetation shall comply with the criteria contained in the policy adopted by the Division entitled Phase III Revegetation Success Standards for Pasture and Previously Mined Areas.
- (c)
- (1) The period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the Division in accordance with paragraph (c)(4) of this Section.
 - (2) The period of responsibility shall continue for a period of not less than:
 - (i) Five full years, except as provided in paragraph (c)(2)(ii) of this section. The vegetation parameters identified in paragraph (b) of this section for grazing land, pastureland, or cropland shall equal or exceed the approved success standard during the growing season of any 2 years of the responsibility period, except the first year. Areas approved for the other uses identified in paragraph (b) of this section shall equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.
 - (ii) Two full years for lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof. To the extent that the success standards are established by paragraph (b)(5) of this section, the lands shall equal or exceed the standards during the growing season of the last year of the responsibility period.

- (3) The Division may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, without extending the period of responsibility for revegetative success and bond liability, if such practices can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetative success. Such practices shall be an approved part of the State program and shall constitute normal husbandry practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control; and any pruning, reseeding and/or transplanting specifically necessitated by such action.

SECTION 816.121-U SUBSIDENCE CONTROL: GENERAL REQUIREMENTS

12-05-97

(a) *[Measures to prevent or minimize damage.*

- (1) *The permittee must either adopt measures consistent with known technology that prevent subsidence from causing material damage to the extent technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of surface lands or adopt mining technology that provides for planned subsidence in a predictable and controlled manner.*
- (2) *If a permittee employs mining technology that provides for planned subsidence in a predictable and controlled manner, the permittee must take necessary and prudent measures, consistent with the mining method employed, to minimize material damage to the extent technologically and economically feasible to non-commercial buildings and occupied residential dwellings and structures related thereto except that measures required to minimize material damage to such structures are not required if:*
 - (i) *The permittee has the written consent of their owners, or*
 - (ii) *Unless the anticipated damage would constitute a threat to health or safety, the costs of such measures exceed the anticipated costs of repair.*
- (3) *Nothing in this part prohibits the standard method of room-and-pillar mining.*

- (b) *The person engaged in underground mining activities shall comply with all provisions of the subsidence control plan prepared pursuant to Section 784.20 and approved by the Director.*

(c) *Repair of damage.*

- (1) *Repair of damage to surface lands. The permittee must correct any material damage resulting from subsidence caused to surface lands, to the extent technologically and economically feasible, by restoring the land to a condition capable of maintaining the value and reasonably foreseeable uses that it was capable of supporting before subsidence damage.*
- (2) *Repair or compensation for damage to non-commercial buildings and dwellings and related structures. The permittee must promptly repair or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. If repair option is selected, the permittee must fully rehabilitate, restore or replace the damaged structure. If compensation is selected, the permittee must compensate the owner of the damaged structure for the full amount of the decrease in value resulting from the subsidence-related damage. The permittee may provide compensation by the purchase, before mining, of a non-cancelable premium-prepaid insurance policy. The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.*
- (3) *Repair or compensation for damage to other structures. The permittee must, to the extent required under applicable provisions of state law, either correct material damage resulting from subsidence caused to any structures or facilities not protected by paragraph (c)(2) of this section by repairing the damage or compensate the owner of the structures or facilities for the full amount of the decrease in value resulting from the subsidence. Repair of damage includes rehabilitation, restoration, or replacement of damaged structures or facilities. Compensation may be accomplished by the purchase before mining of a non-cancelable premium-prepaid insurance policy.*
- (4) *Rebuttable presumption of causation by subsidence.*
 - (i) *Rebuttable presumption of causation for damage within angle of draw. If damage to any non-commercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land, a rebuttable presumption exists that the permittee caused the damage. The presumption will normally apply to a 30-degree angle of draw.*
 - (ii) *Approval of site-specific angle of draw. A permittee or permit applicant may request that the presumption apply to an angle of draw different from that established in the state program. The Director may approve*

application of the presumption to a site-specific angle of draw different than that contained in the state program based on a site-specific analysis submitted by an applicant. To establish a site-specific angle of draw, an applicant must demonstrate and the Director must determine in writing that the proposed angle of draw has a more reasonable basis than the standard set forth in the state program, based on a site-specific geotechnical analysis of the potential surface impacts of the mining operation.

- (iii) No presumption where access for pre-subsidence survey is denied. If the permittee was denied access to the land or property for the purpose of conducting the pre-subsidence survey in accordance with Section 784.20(a) of this Chapter, no rebuttable presumption will exist.*
 - (iv) Rebuttal of presumption. The presumption will be rebutted if, for example, the evidence establishes that: The damage predated the mining in question; the damage was proximately caused by some other factor or factors and was not proximately caused by subsidence; or the damage occurred outside the surface area within which subsidence was actually caused by the mining in question.*
 - (v) Information to be considered in determination of causation. In any determination whether damage to protected structures was caused by subsidence from underground mining, all relevant and reasonably available information will be considered by the Director.*
- (5) Adjustment of bond amount for subsidence damage. When subsidence-related material damage to land, structures or facilities protected under paragraphs (c)(1) through (c)(3) of this section occurs, or when contamination, diminution, or interruption to a water supply protected under Section 816.41(e) occurs, the Director must require the permittee to obtain additional performance bond in the amount of the estimated cost of the repairs if the permittee will be repairing, or in the amount of the decrease in value if the permittee will be compensating the owner, or in the amount of the estimated cost to replace the protected water supply if the permittee will be replacing the water supply, until the repair, compensation, or replacement is completed. If repair, compensation, or replacement is completed within 90 days of the occurrence of damage, no additional bond is required. The Director may extend the 90-day time frame, but not to exceed one year, if the permittee demonstrates and the Director finds in writing that subsidence is not complete, that not all probable subsidence-related material damage has occurred to lands or protected structures, or that not all reasonably anticipated changes have occurred affecting the protected water supply, and that therefore it would be unreasonable to complete within 90 days the repair of the subsidence-related material damage to lands or protected structures, or the replacement of protected water supply.*

- (d) *Underground mining activities shall not be conducted beneath or adjacent to –*
- (1) *Public buildings and facilities;*
 - (2) *Churches, schools, and hospitals; or*
 - (3) *Impoundments with a storage capacity of 20 acre-feet or more or bodies of water with a volume of 20 acre-feet or more, unless the subsidence control plan demonstrates that subsidence will not cause material damage to, or reduce the reasonably foreseeable use of, such features or facilities. If the Director determines that it is necessary in order to minimize the potential for material damage to the features or facilities described above or to any aquifer or body of water that serves as a significant water source for any public water supply system, he or she may limit the percentage of coal extracted under or adjacent thereto.*
- (e) *If subsidence causes material damage to any of the features or facilities covered by Paragraph (d) of this Section, the Director may suspend mining under or adjacent to such features or facilities until the subsidence control plan is modified to ensure prevention of further material damage to such features or facilities.*
- (f) *The Director shall suspend underground mining activities under urbanized areas, cities, towns, and communities, and adjacent to industrial or commercial buildings, major impoundments, or perennial streams, if imminent danger is found to inhabitants of the urbanized areas, cities, towns, or communities.*
- (g) *Within a schedule approved by the Director, the operator shall submit a detailed plan of the underground workings. The detailed plan shall include maps and descriptions, as appropriate, of significant features of the underground mine, including the size, configuration, and approximate location of pillars and entries, extraction ratios, measures taken to prevent or minimize subsidence and related damage, areas of full extraction, and other information required by the Director. Upon request of the operator, information submitted with the detailed plan may be held as confidential, in accordance with the requirements of Section 786.16 of this Chapter.]*

[At least 6 months prior to mining, the underground mine operator shall mail a notification to all owners and occupants of surface property and structures above the underground workings. The notification shall contain, at a minimum:

- (a) Identification of specific areas in which mining will take place;*
- (b) Dates that specific areas will be undermined; and,*
- (c) The location or locations where the operators subsidence control plan may be examined.]*

SECTION 816.131

CESSATION OF OPERATIONS: TEMPORARY

5-29-80

- (a) Each person who conducts (surface mining activities) *[underground mining activities]* shall effectively *[support and maintain all surface access openings to underground operations, and]* secure surface facilities in areas in which there are no current operations, but in which operations are to be resumed under an approved permit. Temporary abandonment shall not relieve a person of their obligation to comply with any provisions of the approved permit.
- (b) Before temporary cessation of mining and reclamation operations for a period of thirty days or more, or as soon as it is known that a temporary cessation will extend beyond 30 days, persons who conduct (surface mining activities) *[underground mining activities]* shall submit to the Director a notice of intention to cease or abandon mining and reclamation operations. This notice shall include a statement of the exact number of acres *[and the horizontal and vertical extent of subsurface strata]* which will have been affected in the permit area, prior to such temporary cessation, the extent and kind of reclamation of those areas which will have been accomplished, and identification of the backfilling, regrading, revegetation, environmental monitoring, *[underground opening closures]* and water treatment activities that will continue during the temporary cessation.

SECTION 816.132

CESSATION OF OPERATIONS: PERMANENT

5-29-80

- (a) Persons who cease (surface mining activities) *[underground mining activities]* permanently shall close or backfill or otherwise permanently reclaim all affected areas, in accordance with this Chapter and the permit approved by the Director.
- (b) All underground openings, equipment, structures, or other facilities not required for *[continued underground mining activities and]* monitoring, unless approved by the Director as suitable for the postmining land use or environmental monitoring, shall be removed and the affected land reclaimed.

- (a) General. All affected areas [*surface land areas affected by underground mining activities*] shall be restored in a timely manner –
 - (1) To conditions that are capable of supporting the uses which they were capable of supporting before any mining; or
 - (2) To higher or better uses achievable under criteria and procedures of this Section.
- (b) Determining premining use of land. The premining uses of land to which the postmining land use is compared shall be those uses which the land previously supported, if the land had not been previously mined and had been properly managed.
 - (1) The postmining land use for land that has been previously mined and not reclaimed shall be judged on the basis of land use that existed prior to any mining: Provided that, if the land cannot be reclaimed to the land use that existed prior to any mining because of the previously mined condition, the post-mining land use shall be judged on the basis of the highest and best use that can be achieved which is compatible with surrounding areas and does not require the disturbance of areas previously unaffected by mining.
 - (2) If the premining use of the land was changed within five years of the beginning of mining, the comparison of postmining use to premining use shall include a comparison with the historic use of the land as well as its use immediately preceding mining.
- (c) Criteria for alternative postmining land uses. Higher or better uses may be approved by the Director as alternative postmining land uses after consultation with the landowner or land management agency having jurisdiction over the lands, if the proposed uses meet the following criteria:
 - (1) There is a reasonable likelihood for achievement of the use.
 - (2) The use does not present any probable or actual hazard to public health or safety, or threat of water diminution or pollution.
 - (3) The use will not--

- (i) Be impractical or unreasonable;
 - (ii) Be inconsistent with applicable land use policies or plans;
 - (iii) Involve unreasonable delay in implementation; or
 - (iv) Cause or contribute to violation of Federal, State, or local law.
- (4) Specific and feasible plans are submitted to the Division which show that financing, attainment and maintenance of the postmining land use are feasible if appropriate, are supported by letters of commitment from parties other than the person who conducts the (surface mining activities) [*underground mining activities*].
- (5) Plans for the postmining land use shall have been designed under the general supervision of a registered professional engineer, or other appropriate professional, who will ensure that the plans conform to applicable accepted standards for adequate land stability, drainage, vegetative cover, and esthetic design appropriate for the postmining use of the site.
- (6) The proposed use will neither present actual or probable hazard to public health or safety nor will it pose any actual or probable threat of water flow diminution or pollution.
- (7) The use will not involve unreasonable delays in reclamation.
- (8) Necessary approval of measures to prevent or mitigate adverse effects on fish, wildlife, and related environmental values and threatened or endangered plants shall have been obtained from the Director and appropriate State and Federal fish and wildlife management agencies have been provided a sixty day period in which to review the plan before (surface mining activities) [*underground mining activities*] begin.
- (9) Proposals to change premining land uses of range, fish and wildlife habitat, forest land, hayland, or pasture to a postmining cropland use, where the cropland would require continuous maintenance such as seeding, plowing, cultivation, fertilization, or other similar practices to be practicable or to comply with applicable Federal, State, and local laws, have been reviewed by the Director to ensure that C
 - (i) There is a firm written commitment by the person who conducts (surface mining activities) [*underground mining activities*] or by the landowner or land manager to provide sufficient crop management after release of applicable performance bonds under Subchapter J and Sections 816.111-816.117, to assure that the proposed postmining cropland use remains

practical and reasonable;

- (ii) There is sufficient water available and committed to maintain crop production; and
- (iii) Topsoil quality and depth are sufficient to support the proposed use.

SECTION 816.150 ROADS: GENERAL

10-29-92

(a) Road classification system

- (1) Each road shall be classified as either a primary road or an ancillary road.
- (2) A primary road is any road which is
 - (i) Used for transporting coal or spoil;
 - (ii) Frequently used for access or other purposes for a period in excess of six months; or
 - (iii) To be retained for an approved postmining land use.
- (3) An ancillary road is any road not classified as a primary road.

(b) Performance standards. Roads shall be located, designed, constructed, reconstructed, used, maintained and reclaimed so as to

- (1) Control or prevent erosion, siltation and the air pollution attendant to erosion, including road dust as well as dust occurring on other exposed surfaces, by vegetating or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices;
- (2) Control or prevent damage to fish, wildlife, or their habitat and related environmental values;
- (3) Control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area;
- (4) Neither cause nor contribute to directly or indirectly, the violation of State or Federal water quality standards applicable to receiving waters;
- (5) Minimize the diminution to or degradation of the quality or quantity of surface-

and ground-water systems;

- (6) Refrain from significantly altering the normal flow of water in stream beds or drainage channels;
 - (7) Prevent or control damage to public or private property;
 - (8) Use nonacid- or nontoxic-forming substances in road surfacing; and
 - (9) Have, at a minimum, a static factor of safety of 1.3 for all embankments.
- (c) Design and construction limits and establishment of design criteria. To ensure environmental protection and safety appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement, culvert size, and any necessary design criteria established by the Division.
- (d) Location
- (1) No part of any road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the Division in accordance with the applicable provisions of Sections 816.41 through 816.44, and 816.57 of this Chapter.
 - (2) Road shall be located to minimize downstream sedimentation and flooding.
- (e) Maintenance
- (1) A road shall be maintained throughout its life to meet the performance standards of this part and any additional criteria specified by the Division.
 - (2) A road damaged by a catastrophic event, such as a flood or earthquake, shall be repaired as soon as practical after the damage has occurred.
- (f) A road not to be retained for use under an approved postmining land use shall be reclaimed in accordance with the approved reclamation plan immediately after it is no longer needed for mining and reclamation operations, reclamation shall include:
- (1) Closing the road to traffic;
 - (2) Removing all bridges and culverts unless approved as part of the postmining land use;

- (3) Restoring the natural drainage patterns;
- (4) Reshaping all cut and fill slopes to be compatible with the postmining land use and to complement the drainage pattern of the surrounding terrain;
- (5) Scarifying or ripping the roadbed, replacing topsoil and revegetating disturbed surfaces in accordance with Section 816.22 and Sections 816.111 through 816.117; and
- (6) Removing or otherwise disposing of road-surfacing materials that are incompatible with the postmining land use and revegetation requirements.

SECTION 816.151 ROADS: PRIMARY ROADS

10-29-92

Primary roads shall meet the requirements of Section 816.150 and the additional requirements of this Section.

- (a) Certification. The design and construction or reconstruction of primary roads shall be certified in a report to the Division by a qualified registered professional engineer as meeting the requirements of this part; current, prudent engineering practices and any design criteria established by the Division.
- (b) Location.
 - (1) To minimize erosion, a primary road is to be located, insofar as practical, on the most stable available surfaces.
 - (2) Stream fords by primary roads are prohibited unless they are specifically approved by the Division as temporary during periods of construction.
- (c) Drainage control.
 - (1) Each primary road shall be designed, constructed or reconstructed, and maintained to have adequate drainage control, using structures such as, but not limited to bridges, ditches, cross drains, and ditch relief drains. The drainage control system shall be designed to pass the peak runoff safely from a 10-year, 6-hour precipitation event or greater event, as specified by the Division.
 - (2) Drainage pipes and culverts shall be constructed to avoid plugging or collapse and erosion at inlets and outlets.

- (3) Drainage ditches shall be designed to prevent uncontrolled drainage over the road surface and embankment. Trash racks and debris basins shall be installed in the drainage ditches where debris from the drainage area may impair the functions of drainage and sediment control structures.
 - (4) Culverts shall be designed, installed, and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the weight of vehicles using the road.
 - (5) Natural stream channels shall not be altered or relocated without the prior approval of the Division in accordance with Section 816.43 through 816.57.
 - (6) Except as provided in paragraph (b)(2) of this Section, drainage structures shall be used for stream channel crossings, made using bridges, culverts, or other structures designed, constructed, and maintained using current, prudent engineering practice.
- (d) Surfacing. Primary roads shall be surfaced with rock, crushed gravel, asphalt, or other material approved by the Division as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road.
- (e) Maintenance. Routine maintenance for primary roads shall include repairs to the road surface, blading, filling potholes and adding replacement gravel or asphalt. It shall also include revegetation, brush removal, and minor reconstruction of road segments as necessary.

SECTION 816.180

OTHER TRANSPORTATION FACILITIES

5-29-80

Railroad loops, spurs, sidings, surface conveyor systems, chutes, aerial tramways, or other transportation facilities shall be designed, constructed or reconstructed, and maintained, and the area restored, to –

- (a) Prevent, to the extent possible using the best technology currently available –
 - (1) Damage to fish, wildlife, and related environmental values; and
 - (2) 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;
- (b) Control and minimize diminution or degradation of water quality and quantity;

- (c) Control and minimize erosion and siltation;
- (d) Control and minimize air pollution; and
- (e) Prevent damage to public or private property.

SECTION 816.181

SUPPORT FACILITIES AND UTILITY INSTALLATIONS

5-29-80

- (a) Support facilities required for, or used incidentally to, the operation of the mine, including, but not limited to, mine building, coal loading facilities at or near the mine site, coal storage facilities, equipment-storage facilities, fan buildings, hoist buildings, preparation plants, sheds, shops, and other buildings, shall be designed, constructed or reconstructed, and located to prevent or control erosion and siltation, water pollution, and damage to public or private property. Support facilities shall be designed, constructed or reconstructed, maintained, and used in a manner which prevents to the extent possible using the best technology currently available –
 - (1) Damage to fish, wildlife, and related environmental values; and
 - (2) 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.
- (b) All (surface mining activities) [*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 Director.

PART 817 -- PROTECTION OF FISH, WILDLIFE, AND RELATED
ENVIRONMENTAL VALUES

SECTION

817.97 Protection of Fish, Wildlife, and Related Environmental Values

SECTION 817.97 PROTECTION OF FISH, WILDLIFE, AND RELATED
ENVIRONMENTAL VALUES

11-14-89

-----See Section 816.97

PART 818 -- SPECIAL STATE PROGRAM PERFORMANCE STANDARDS --
CONCURRENT SURFACE AND UNDERGROUND MINING

SECTION

818.1	Scope
818.2	Objective
818.4	Responsibilities
818.11	Applicability
818.13	Compliance with Variance
818.15	Additional Performance Standards

SECTION 818.1 SCOPE

5-29-80

This Part sets forth the minimum performance standards with which each person who combines surface mining activities with underground mining activities must comply under a variance from the requirement that reclamation efforts proceed as contemporaneously as practicable for specific areas within the permit area.

SECTION 818.2 OBJECTIVE

5-29-80

The objective of this Part is to ensure the maximum practicable recovery of coal resources and to avoid multiple disturbances of surface lands or waters.

SECTION 818.4 RESPONSIBILITIES

5-29-80

- (a) The Director shall review and grant or deny variances from the requirement that reclamation efforts proceed as contemporaneously as practicable in accordance with Section 785.18 and this Part.
- (b) The person who conducts combined surface and underground mining activities shall comply with the provisions of this Part.

SECTION 818.11

APPLICABILITY

5-29-80

A variance under this Part applies only to those specific areas within the permit area that the person conducting combined surface and underground mining activities as shown to be necessary for implementing the proposed concurrent operations and that the Director has approved in the permit under Section 785.18. The variance is effective for any particular portion of the permit area only for the time necessary to facilitate the authorized underground mining activities.

SECTION 818.13

COMPLIANCE WITH VARIANCE

5-29-80

- (a) Each person who conducts operations under a variance issued under Section 785.18 shall comply with all applicable requirements of this Subchapter and the State program, except to the extent that
 - (1) A delay in compliance with these requirements is specifically authorized by the variance issued under the permit; and
 - (2) The delay in compliance is necessary to achieve the purposes for which the variance was granted.
- (b) Each person who conducts activities under a variance issued under Section 785.18 shall comply with each requirement of the variance as set forth in the permit.

SECTION 818.15

ADDITIONAL PERFORMANCE STANDARDS

5-29-80

In addition to the requirements of Parts 816, each person who conducts combined surface and underground mining activities shall comply with the following:

- (a) A 500 foot barrier pillar of coal shall be maintained between the surface and underground mining activities in any one seam, the Director, the Mine Safety and Health Administration, and the State Labor Division, may, however, approve a lesser distance, after a finding by the Director that mining at a lesser distance will result in
 - (1) Improved coal resources recovery;
 - (2) Abatement of water pollution; or
 - (3) Elimination of hazards to the health and safety of the public.

- (b) The vertical distance between combined surface and underground mining activities working separate seams shall be sufficient to provide for the health and safety of the workers and to prevent surface water from entering the underground workings.
- (c) No combined activities shall reduce the protection provided public health and safety below the level of protection required for those activities if conducted without a variance.

PART 819 -- SPECIAL STATE PROGRAM PERFORMANCE STANDARDS -- AUGER MINING

SECTION

819.1	Scope
819.2	Objectives
819.11	Auger Mining; Additional Performance Standards

SECTION 819.1 SCOPE

5-29-80

This Part sets forth environmental protection performance standards in addition to those of Part 816 for surface mining activities involving auger mining.

SECTION 819.2 OBJECTIVES

5-29-80

The objectives of this Part are to

- (a) Prevent adverse environmental effects from auger mining; and
- (b) Prevent any unnecessary loss of coal reserves.

SECTION 819.11 AUGER MINING: ADDITIONAL PERFORMANCE STANDARDS

5-29-80

- (a) Any auger mining associated with surface mining activities shall be conducted to maximize recoverability of mineral reserves remaining after the mining activities are completed. Each person who conducts auger mining operations shall leave areas of undisturbed coal to provide access for removal of those reserves by future underground mining activities, unless the Director determines that the coal reserves have been depleted or are limited in thickness or extent to the point that it will not be practicable to recover the remaining coal reserves. The Director shall make such determination only upon presentation of appropriate technical evidence by the operator.

Undisturbed areas of coal shall be left in unmined sections which

- (1) Are a minimum of 250 feet wide at any point between each group of auger openings to the full depth of the auger hole;
 - (2) Are no more than 2,500 feet apart, measured from the center of one section to the center of the next section, unless a greater distance is set forth in the permit application under Section 785.20 and approved by the Director; and
 - (3) For multiple seam mining, shall have a width of at least 250 feet plus 50 feet for each subjacent workable coal seam. The centers of all unmined sections shall be aligned vertically.
- (b) No auger hole shall be made closer than 500 feet in horizontal distance to any abandoned or active underground mine workings, except as approved in accordance with Section 816.79.
- (c) In order to prevent pollution of surface and ground water and to reduce fire hazards, each auger hole, except as provided in Paragraph (d) of this Section, shall be plugged so as to prevent the discharge of water from the hole and access of air to the coal, as follows:
- (1) Each auger hole discharging water containing toxic-forming or acid-forming material shall be sealed within 72 hours after completion with an impervious and noncombustible material. If sealing is not possible within 72 hours, the discharge shall be treated commencing within 72 hours after completion to meet applicable effluent limitations and water-quality standards until the holes are sealed; and
 - (2) Sealed with impervious and noncombustible material, as contemporaneously as practicable with the augering operation, as approved by the Division, if the holes are not discharging water containing acid-or-toxic-forming material.
- (d) An auger hole need not be plugged, if the Director finds
- (1) Impoundment of the water which would result from plugging the hole may create a hazard to the public health or safety; and
 - (2) Drainage from the auger hole will not pose a threat of pollution to surface water and will comply with the requirements of Section 816.41-816.42.
- (e) The Director shall prohibit auger mining, if he determines that
- (1) Adverse water quality impacts cannot be prevented or corrected;
 - (2) Fill stability cannot be achieved;

- (3) The prohibition is necessary to maximize the utilization, recoverability or conservation of the solid fuel resources; or
- (4) Subsidence resulting from auger mining may disturb or damage powerlines, pipelines, buildings, or other facilities.

PART 823 -- SPECIAL STATE PROGRAM PERFORMANCE STANDARDS --
OPERATIONS ON PRIME FARMLAND

SECTION

823.1	Scope and Purpose
823.4	Responsibilities
823.11	Applicability
823.12	Soil Removal and Stockpiling
823.14	Soil replacement
823.15	Revegetation and Restoration of Soil Productivity

SECTION 823.1 SCOPE AND PURPOSE

5-27-99

This part sets forth special environmental protection performance, reclamation, and design standards for surface coal mining and reclamation operations on prime farmland.

SECTION 823.4 RESPONSIBILITIES

5-27-99

- (a) The Natural Resources Conservation Service within Arkansas shall establish specifications for prime farmland soil removal, storage, replacement, and reconstruction.
- (b) The Director shall use the soil-reconstruction specifications of Paragraph (a) of this Section to carry out his responsibilities under Section 785.17 and Subchapter J of this Chapter.

SECTION 823.11 APPLICABILITY

5-27-99

The requirements of this part shall not apply to --

[Ed. note: Section 823.11(a) is suspended "insofar as it excludes from the requirements of Part 823 those coal preparation plants, support facilities, and roads that are part of surface mining activities".]

- (a) Coal preparation plants, support facilities, and roads of surface and underground mines that are actively used over extended periods of time and where such uses affect a minimal amount of land. Such uses shall meet the requirements of Part 816 of this Chapter for surface mining activities and for underground mining activities;

- (b) Disposal areas containing coal mine waste resulting from underground mines that is not technologically and economically feasible to store in underground mines or on non-prime farmland. The operator shall minimize the area of prime farmland used for such purposes.
- (c) Prime farmland that has been excluded in accordance with Section 785.17(a) of this Chapter.

SECTION 823.12 SOIL REMOVAL AND STOCKPILING

5-27-99

- (a) Prime farmland soils shall be removed from the areas to be disturbed before drilling, blasting, or mining.
- (b) The minimum depth of soil and soil materials to be removed and stored for use in the reconstruction of prime farmland shall be sufficient to meet the requirements of Section 823.14(b).
- (c) Soil removal and stockpiling operations on prime farmland shall be conducted to--
 - (1) Separately remove the topsoil, or remove other suitable soil materials where such other soil materials will create a final soil having a greater productive capacity than that which exist prior to mining. If not utilized immediately, this material shall be placed in stockpiles separate from the spoil and all other excavated materials; and
 - (2) Separately remove the B or C soil horizon or other suitable soil material to provide the thickness of suitable soil required by Sec. 823.14(b), except as approved by the Director where the B or C soil horizons would not otherwise be removed and where soil capabilities can be retained. If not utilized immediately, each horizon or other material shall be stockpiled separately from the spoil and all other excavated materials. Where combinations of such soil materials created by mixing have been shown to be equally or more favorable for plant growth than the B horizon, separate handling is not necessary.
- (d) Stockpiles shall be placed within the permit area where they will not be disturbed or be subject to excessive erosion. If left in place for more than 30 days, stockpiles shall meet the requirements of Section 816.22 of this Chapter.

SECTION 823.14 SOIL REPLACEMENT

5-27-99

- (a) Soil reconstruction specifications established by the Natural Resources Conservation Service shall be based upon the standards of the National Cooperative Soil Survey and shall

include, as a minimum, physical and chemical characteristics of reconstructed soils and soil descriptions containing soil-horizon depths, soil densities, soil pH, and other specifications such that reconstructed soils will have the capability of achieving levels of yield equal to, or higher than, those of nonmined prime farmland in the surrounding area.

- (b) The minimum depth of soil and substitute soil material to be reconstructed shall be 48 inches, or a lesser depth equal to the depth to a subsurface horizon in the natural soil that inhibits or prevents root penetration, or a greater depth if determined necessary to restore the original soil productive capacity. Soil horizons shall be considered as inhibiting or preventing root penetration if their physical or chemical properties or water-supplying capacities cause them to restrict or prevent penetration by roots of plants common to the vicinity of the permit area and if these properties or capacities have little or no beneficial effect on soil productive capacity.
- (c) The operator shall replace and regrade the soil horizons or other root-zone material with proper compaction and uniform depth.
- (d) The operator shall replace the B horizon, C horizon, or other suitable material specified in Sec. 823.12(c)(2) to the thickness needed to meet the requirements of paragraph (b) of this section. In those areas where the B or C horizons were not removed but may have been compacted or otherwise damaged during the mining operation, the operator shall engage in deep tilling or other appropriate means to restore pre-mining capabilities.
- (e) The operator shall replace the topsoil or other suitable soil materials specified in Section 823.12(c)(1) as the final surface soil layer. This surface soil layer shall equal or exceed the thickness of the original surface soil layer, as determined by the soil survey.

SECTION 823.15 REVEGETATION AND RESTORATION OF SOIL PRODUCTIVITY

5-27-99

- (a) Following prime farmland soil replacement, the soil surface shall be stabilized with a vegetative cover or other means that effectively controls soil loss by wind and water erosion.
- (b) Prime farmland soil productivity shall be restored in accordance with the following provisions:
 - (1) Measurement of soil productivity shall be initiated within 10 years after completion of soil replacement.
 - (2) Soil productivity shall be measured on a representative sample or on all of the

mined and reclaimed prime farmland area using the reference crop determined under Paragraph (b)(6) of this Section. A statistically valid sampling technique at a 90-percent or greater statistical confidence level shall be used as approved by the Director in consultation with the Natural Resources Conservation Service.

- (3) The measurement period for determining average annual crop production (yield) shall be a minimum of 3 crop years prior to release of the operator's performance bond.
- (4) The level of management applied during the measurement period shall be the same as the level of management used on nonmined prime farmland in the surrounding area.
- (5) Restoration of soil productivity shall be considered achieved when the average yield during the measurement period equals or exceeds the average yield of the reference crop established for the same period for nonmined soils of the same or similar texture or slope phase of the soil series in the surrounding area under equivalent management practices.
- (6) The reference crop on which restoration of soil productivity is proven shall be selected from the crops most commonly produced on the surrounding prime farmland. Where row crops are the dominant crops grown on prime farmland in the area, the row crop requiring the greatest rooting depth shall be chosen as one of the reference crops.
- (7) Reference crop yields for a given crop season are to be determined from--
 - (i) The current yield records of representative local farms in the surrounding area, with concurrence by the Natural Resources Conservation Service; or
 - (ii) The average county yields recognized by the U.S. Department of Agriculture, which have been adjusted by the Natural Resources Conservation Service for local yield variation within the county that is associated with differences between nonmined prime farmland soil and all other soils that produce the reference crop.
- (8) Under either procedure in Paragraph (b)(7) of this Section, the average reference crop yield may be adjusted, with the concurrence of the Natural Resources Conservation Service, for--
 - (i) Disease, pest, and weather-induced seasonal variations; or
 - (ii) Differences in specific management practices where the overall management practices of the crops being compared are equivalent.

PART 824 -- SPECIAL STATE PROGRAM PERFORMANCE STANDARDS --
MOUNTAINTOP REMOVAL

SECTION

- 824.1 Scope
- 824.2 Objectives
- 824.11 Mountaintop Removal: Performance Standards

SECTION 824.1 SCOPE

5-29-80

This part sets forth special environmental protection performance, reclamation, and design standards for surface coal mining activities constituting mountaintop removal mining.

SECTION 824.2 OBJECTIVES

5-29-80

The objectives of this Part are to

- (a) Enhance coal recovery;
- (b) Reclaim the land to equal or higher postmining use; and
- (c) Protect and enhance environmental and other values protected under the Act and this Chapter.

SECTION 824.11 MOUNTAINTOP REMOVAL: PERFORMANCE STANDARDS

5-29-80

- (a) Under the State program surface coal mining activities may be conducted under a variance from the requirement of this Subchapter for restoring affected areas to their approximate original contour, if
 - (1) The Director grants the variance under a permit, in accordance with Section 785.14;
 - (2) The activities involve the mining of an entire coal seam running through the upper fraction of a mountain, ridge, or hill, by removing all of the overburden and creating a level plateau or gently rolling contour with no highwalls remaining;

- (3) An industrial, commercial, agricultural, residential, or public facility (including recreational facilities) use is proposed and approved for the affected land;
- (4) The alternative land-use requirements of Section 816.133 are met;
- (5) All applicable requirements of this Subchapter and the State program, other than the requirement to restore affected areas to their approximate original contour, are met;
- (6) An outcrop barrier of sufficient width, consisting of the toe of the lowest coal seam, and its associated overburden, are retained to prevent slides and erosion, except that the Director may permit an exemption to the retention of the coal barrier requirement if the following conditions are satisfied
 - (i) The proposed mine site was mined prior to May 3, 1978, and the toe of the lowest seam has been removed; or
 - (ii) A coal barrier adjacent to a head-of-hollow fill may be removed after the elevation of a head-of-hollow fill attains the elevation of the coal barrier if the head-of-hollow fill provides the stability otherwise ensured by the retention of a coal barrier;
- (7) The final grade slopes on the mined area are less than 1v:5h., so as to create a level plateau or gently rolling configuration, and the out slopes of the plateau do not exceed 1v:2h except where engineering data substantiates, and the Director finds, in writing, and includes in the permit under Section 785.14, that a minimum static safety factor of 1.5 will be attained;
- (8) The resulting level or gently rolling contour is graded to drain inward from the outslope, except at specified points where it drains over the outslope in stable and protected channels. The drainage shall not be through or over a valley or head-of-hollow fill.
- (9) Natural water courses below the lowest coal seam mined are not damaged;
- (10) All waste and acid-forming or toxic-forming materials, including the strata immediately below the coal seam, are covered with non-toxic spoil to prevent pollution and achieve the approved postmining land use; and
- (11) Spoil is placed on the mountaintop bench as necessary to achieve the postmining land use approved under paragraphs (a)(3) and (a)(4) of this Section. All excess spoil material not retained on the mountaintop shall be placed in accordance with Sections 816.52 and 816.71-816.74.

PART 827 -- SPECIAL STATE PROGRAM PERFORMANCE STANDARDS COAL
PROCESSING PLANTS AND SUPPORT FACILITIES NOT LOCATED AT OR NEAR
THE MINE SITE OR NOT WITHIN THE PERMIT AREA FOR A MINE

SECTION

827.1	Scope
827.11	Applicability
827.12	Coal Processing Plants: Performance Standards

SECTION 827.1 SCOPE

5-29-80

This Part sets forth requirements for coal processing plants and their support facilities not located within the permit area for a mine, to ensure the protection of public property and the environment, in accordance with the Act.

SECTION 827.11 APPLICABILITY

5-29-80

Each person who conducts surface coal mining and reclamation operations, which includes the operation of a coal processing plant or support facility which is not located within the permit area for a specific mine, 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 PROCESSING PLANTS: PERFORMANCE
STANDARDS

12-05-97

Construction, operation, maintenance, modification, reclamation, and removal activities at operations covered by this Part shall comply with the following

- (a) Signs and markers for the coal processing plant, coal processing waste disposal area, and water treatment facilities shall comply with Section 816.11.
- (b) Roads, transport, and associated structures shall be constructed, maintained, and reclaimed in accordance with Section 816.150-816.151.
- (c) Any stream or channel realignment shall comply with Section 816.44.

- (d) If required by the Director, any disturbed area related to the coal processing plant or associated facilities shall have sediment control structures, in compliance with Section 816.45 and 816.46, and all discharges from these areas shall meet the requirements of Section 816.41-816.42 and any other applicable State or Federal law.
- (e) Permanent impoundments associated with coal processing plants shall meet the requirements of Section 816.49 and 816.56. Dams constructed of or impounding coal processing waste shall comply with Section 816.84 of this Chapter.
- (f) Use of water wells shall comply with Section 816.53 and water rights shall be protected in accordance with Section 816.54.
- (g) Disposal of coal processing waste, non-coal mine waste, and excess spoil shall comply with Section 816.81-816.87, 816.89, and 861.71-816.74, respectively.
- (h) Discharge structures for diversions and sediment control structures shall comply with Section 816.47.
- (i) Air pollution control measures associated with fugitive dust emissions shall comply with Section 816.95.
- (j) Fish, wildlife and related environmental values shall be protected in accordance with Section 816.97.
- (k) Slide areas and other surface areas shall comply with Section 816.99.
- (l) Adverse effects upon or resulting from nearby underground coal mining activities shall be minimized by appropriate measures including, but not limited to, compliance with Sections 816.55 and 816.79.
- (m) Reclamation shall include proper topsoil handling procedures, revegetation, and abandonment, in accordance with Section 816.56, 816.100-816.105, 816.111-816.117, and 816.131-816.133.
- (n) Conveyor, buildings, storage bins or stockpiles, water treatment facilities, water storage facilities, and any structure or system related to the coal processing plant shall comply with Part 816.
- (o) Any coal processing plant or associated structures located on prime farmland shall meet the requirements of Part 823.

PART 828 -- SPECIAL STATE PROGRAM PERFORMANCE STANDARDS -- IN SITU PROCESSING

SECTION

828.1	Scope
828.2	Objective
828.11	In Situ Processing: Performance Standards
828.12	In Situ Processing: Monitoring

SECTION 828.1 SCOPE

5-29-80

This Part sets forth special environmental protection performance, reclamation and design standards for in situ processing activities.

SECTION 828.2 OBJECTIVE

5-29-80

This Part is intended to ensure that all in situ processing activities are conducted in a manner which preserves and enhances environmental values in accordance with the Act. This Part provides additional performance, reclamation and design standards to reflect the nature of in situ processing.

SECTION 828.11 IN SITU PROCESSING: PERFORMANCE STANDARDS

10-29-92

- (a) The person who conducts in situ processing activities shall comply with the underground performance standards of Part 816 and this Section.
- (b) In situ processing activities shall be planned and conducted to minimize disturbance to the prevailing hydrologic balance by:
 - (1) Avoiding discharge of fluids into holes or wells, other than as approved by the Director;
 - (2) Injecting process recovery fluids only into geologic zones or intervals approved as production zones by the Director;
 - (3) Avoiding annular injection between the wall of the drill hole and the casing; and
 - (4) Preventing discharge of process fluid into surface water.

- (c) Each person who conducts in situ processing activities shall submit for approval as part of the application for permit under Section 785.22, and follow after approval, a plan that ensures that all acid-forming, toxic-forming, or radioactive gases, solids, or liquids constituting a fire, health, safety, or environmental hazard and caused by the mining and recovery process are promptly treated, confined, or disposed of, in a manner that prevents contamination of ground and surface waters, damage to fish, wildlife and related environmental values, and threats to the public health and safety.
- (d) Each person who conducts in situ processing activities shall prevent flow of the process recovery fluid:
 - (1) Horizontally beyond the affected area identified in the permit; and
 - (2) Vertically into overlying or underlying aquifers.
- (e) Each person who conducts in situ processing activities shall restore the quality of affected groundwater in the permit and adjacent area, including groundwater above and below the production zone, to the approximate premining levels or better, to ensure that the potential for use of the groundwater is not diminished.

SECTION 828.12 IN SITU PROCESSING: MONITORING

10-29-92

- (a) Each person who conducts in situ processing activities shall monitor the quality and quantity of surface and groundwater and the subsurface flow and storage characteristics, in a manner approved by the Director under Section 816.52, to measure changes in the quantity and quality of water in surface and groundwater systems in the permit and adjacent area.
- (b) Air and water quality monitoring shall be conducted in accordance with monitoring programs approved by the Director as necessary according to appropriate Federal and State air and water quality standards.

SUBCHAPTER L -- STATE PROGRAM INSPECTION AND ENFORCEMENT PROCEDURES

PART 842 -- INSPECTIONS

SECTION

842.1	Scope
842.11	Inspections
842.12	Citizens' Requests for Inspections
842.13	Right of Entry
842.14	Review of Adequacy and Completeness of Inspections
842.15	Review of Decision Not to Inspect or Enforce
842.16	Availability of Records

SECTION 842.1

SCOPE

5-29-80

This Part sets forth general procedures governing inspections under the State program.

SECTION 842.11

INSPECTIONS

12-05-97

- (a) Authorized representatives of the Director shall conduct inspections of surface coal mining and reclamation operations as necessary:
 - (1) To develop or enforce the State program; and
 - (2) To determine whether any notice of violation or cessation order issued during an inspection authorized under this Section has been complied with.
- (b)
 - (1) An authorized representative of the Director shall immediately conduct an inspection to enforce any requirement of the Act, this Chapter, the State program, or any condition of a permit or an exploration approval imposed under the Act, this Chapter, or the State program when the authorized representative has reason to believe, on the basis of information available to him or her (other than information resulting from a previous inspection), that there exists a violation of the Act, this Chapter, the State program or any condition of a permit or an exploration approval, or that there exists any condition, practice or violation which creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause a significant, imminent environmental harm to land, air or water resources.

- (2) An authorized representative shall have reason to believe that a violation, condition or practice exists if the facts alleged by the person supplying such information would, if true, constitute a condition, practice or violation referred to in Paragraph (b)(1).
- (c) The Division shall conduct inspections of all coal exploration and active or inactive surface coal mining and reclamation operations under its jurisdiction. The Division shall:
 - (1) With respect to active surface coal mining and reclamation operations:
 - (i) Conduct an average of at least one partial inspection per month of each active surface coal mining and reclamation operation. A partial inspection is an on-site or aerial review of a person's compliance with some of the permit requirements and conditions imposed under the state program.
 - (A) Aerial inspections shall be conducted in a manner which reasonably ensures the identification and documentation of conditions at each surface coal mining and reclamation site inspected.
 - (B) Any potential violation observed during an aerial inspection shall be investigated on site within three (3) calendar days; provided, that any indication of a condition, practice or violation constituting cause for issuance of a cessation order under Section 23 of the Act shall be investigated on site immediately, and provided further, that an on-site investigation of a potential violation observed during an aerial inspection shall not be considered to be an additional partial or complete inspection for the purposes of Paragraphs (a) and (b) of this Section.
 - (ii) Conduct an average of at least one complete inspection per calendar quarter of each active surface coal mining and reclamation operation. A complete inspection is an on-site review of a person's compliance with all permit conditions and requirements imposed under the state program within the entire area disturbed or affected by surface coal mining and reclamation operations.
 - (2) With respect to inactive surface coal mining and reclamation operations:
 - (i) Conduct an average of at least one complete inspection per calendar quarter of each inactive surface coal mining and reclamation operation; and

- (ii) Conduct such partial inspections of each inactive surface coal mining and reclamation operation as are necessary to ensure effective enforcement of the regulatory program and the Act.
 - (iii) For purposes of this Section, an inactive surface coal mining and reclamation operation is one for which -
 - (A) The Director has secured from the permittee the written notice provided for under Section 816.131(b) of this Chapter; or,
 - (B) Reclamation Phase II as defined at Section 800.40 of this Chapter has been completed.
- (3) With respect to coal exploration operations, conduct such inspections as are necessary to ensure compliance with the Act by those coal explorations which substantially disturb the natural land surface.
- (d) The inspections required under Paragraphs (a),(b),and (c) of this Section shall:
 - (1) Be carried out on an irregular basis, so as to monitor compliance at all operations, including those which operate nights, weekends, or holidays;
 - (2) Occur without prior notice to the permittee or any agent or employee of such permittee, except for necessary on-site meetings; and
 - (3) Include the prompt filing of inspection reports adequate to enforce the requirements of the applicable program.
- (e) Abandoned site means a surface coal mining and reclamation operation for which the Director has found in writing that:
 - (1) All surface and underground coal mining and reclamation activities at the site have ceased;
 - (2) The Director has issued at least one notice of violation, and either:
 - (i) Is unable to serve the notice despite diligent efforts to do so; or
 - (ii) The notice was served and has progressed to a failure-to-abate cessation order;
 - (3) The Director:

- (i) Is taking action to ensure that the permittee and operator, and owners and controllers of the permittee and operator, will be precluded from receiving future permits while violations continue at the site; and
 - (ii) Is taking action pursuant to Sections 19, 20, 24, or 25 of the Act to ensure that abatement occurs or that there will not be a recurrence of the failure-to-abate, except where after evaluating the circumstances he or she concludes that further enforcement offers little or no likelihood of successfully compelling abatement or recovering any reclamation costs; and
- (4) Where the site is, or was, permitted or bonded:
 - (i) The permit has either expired or been revoked; and
 - (ii) The Director has initiated and is diligently pursuing forfeiture of, or has forfeited, any available performance bond.
- (f) In lieu of the inspection frequency established in paragraph (c) of this section, the Division shall inspect each abandoned site on a set frequency commensurate with the public health and safety and environmental considerations present at each specific site, but in no case shall the inspection frequency be set at less than one complete inspection per calendar-year.
 - (1) In selecting an alternate inspection frequency authorized under the paragraph above, the Division shall first conduct a complete inspection of the abandoned site and provide public notice under paragraph (f)(2) of this section. Following the inspection and public notice, the Division shall prepare and maintain for public review a written finding justifying the alternative inspection frequency selected. This written finding shall justify the new inspection frequency by affirmatively addressing in detail all of the following criteria:
 - (i) How the site meets each of the criteria under the definition of an abandoned site under paragraph (e) of this section and thereby qualifies for a reduction in inspection frequency;
 - (ii) Whether, and to what extent, there exist on the site impoundments, earthen structures or other conditions that pose, or may reasonably be expected to ripen into, imminent dangers to the health or safety of the public or significant environmental harms to land, air or water resources;
 - (iii) The extent to which existing impoundments or earthen structures were

constructed and certified in accordance with prudent engineering designs approved in the permit;

- (iv) The degree to which erosion and sediment control is present and functioning;
 - (v) The extent to which the site is located near or above urbanized areas, communities, occupied dwellings, schools and other public or commercial buildings and facilities;
 - (vi) The extent of reclamation completed prior to abandonment and the degree of stability of unreclaimed areas, taking into consideration the physical characteristics of the land mined and the extent of settlement or revegetation that has occurred naturally with time; and
 - (vii) Based on a review of the complete and partial inspection report record for the site during at least the last two consecutive years, the rate at which adverse environmental or public health and safety conditions have and can be expected to progressively deteriorate.
- (2) The public notice and opportunity to comment required under paragraph (f)(1) of this section shall be provided as follows:
- (i) The Division shall place a notice in the newspaper with the broadest circulation in the locality of the abandoned site providing the public with a 30-day period in which to submit written comments.
 - (ii) The public notice shall contain the permittee's name, the permit number, the precise location of the land affected, the inspection frequency proposed, the general reasons for reducing the inspection frequency, the bond status of the permit, the telephone number and address of the office where written comments on the reduced inspection frequency may be submitted, and the closing date of the comment period.

SECTION 842.12

CITIZENS' REQUESTS FOR INSPECTIONS

5-29-80

- (a) A citizen may request an inspection under Section 842.11(b), by furnishing to an authorized representative of the Director a signed, written statement (or an oral report followed by a signed, written statement) giving the authorized representative reason to believe that a violation, condition, or practice referred to in Section 842.11(b)(1) exists and setting forth a phone number and address where the citizen can be contacted.

- (b) The identity of any person supplying information to the Division relating to a possible violation or imminent danger or harm shall remain confidential with the Division, if requested by that person, unless that person elects to accompany the inspector on the inspection, or unless disclosure is required under the Freedom of Information Act (Ark. Acts, Act 93 of 1967, as amended; Ark. Stat. Ann. 12-2801) or any Federal law;
- (c) If an inspection is conducted as a result of information provided to the Division by a citizen as described in Paragraph (a) of this Section, the citizen shall be notified as far in advance as practicable when the inspection is to occur and shall be allowed to accompany the authorized representative of the Director during the inspection. Such person has a right of entry to, upon and through the coal exploration or surface coal mining and reclamation operation about which he or she supplied information, but only if he or she is in the presence of and is under the control, direction and supervision of the authorized representative while on the mine property. Such right of entry does not include a right to enter buildings without consent of the person in control of the building or without a search warrant.
- (d) Within ten days of the inspections or, if there is no inspection, within fifteen days of receipt of the citizen's written statement, the Division shall send the citizen the following
 - (1) If an inspection was made, a description of the enforcement action taken, which may consist of copies of the inspection report and all notices of violation and cessation orders issued as a result of the inspection or an explanation or why no enforcement action was taken;
 - (2) If no inspection was conducted, an explanation of the reason why; and
 - (3) An explanation of the citizen's right, if any, to informal review of the action or inaction of the Division under Section 842.15.
 - (4) The Division shall give copies of all materials in Paragraphs (d)(1) and (2) of this Section within the time limits specified in those paragraphs to the person alleged to be in violation, except that the name of the citizen shall be removed unless disclosure of the citizen's identity is permitted under Paragraph (b) of this Section.

- (a) Each authorized representative of the Director conducting an inspection under Section 842.11
 - (1) Shall have a right of entry to, upon, and through any coal exploration or surface coal mining and reclamation operation, without advance notice or a search warrant, upon presentation of appropriate credentials; and
 - (2) May, at reasonable times and without delay, have access to and copy any records, and inspect any monitoring equipment or method of operation, required under the Act, this Chapter, the State program or any condition of an exploration approval or permit imposed under the Act, this Chapter, or the State program.
- (b) No search warrant shall be required with respect to any activity under Paragraph (a) except that a search warrant may be required for entry into a building.

SECTION 842.14 REVIEW OF ADEQUACY AND COMPLETENESS OF INSPECTIONS

12/05/97

Any person who is or may be adversely affected by a surface coal mining and reclamation operation or a coal exploration operation may notify the Director in writing of any alleged failure on the part of the Division to make adequate and complete or periodic inspections as provided in this Part. The notification shall include sufficient information to create a reasonable belief that the rules of this Part are not being complied with and to demonstrate that the person is or may be adversely affected. The Director shall within fifteen days following receipt of the notification determine whether adequate and complete or periodic inspections have been made, and if not, shall immediately order an inspection to remedy the noncompliance. The Director shall also furnish the complainant with a written statement of the reasons for such determination and the actions, if any, taken to remedy the noncompliance.

SECTION 842.15 REVIEW OF DECISION NOT TO INSPECT OR ENFORCE

5-29-80

- (a) Any person who is or may be adversely affected by a coal exploration or surface coal mining and reclamation operation may ask the Commission to review informally an authorized representative's decision not to inspect or take appropriate enforcement action with respect to any violation alleged by that person in a request for inspection under Section 842.12. The request for review shall be in writing and include a statement of how the person is or may be adversely affected and why the decision merits review.
- (b) The Commission shall conduct the review and inform the person, in writing, of the results of

the review within thirty days after its next meeting following receipt of the request. The person alleged to be in violation shall also be given a copy of the results of the review, except that the name of the citizen shall not be disclosed unless confidentiality has been waived or disclosure is required under the Arkansas Freedom of Information Act or any Federal law.

- (c) Informal review under this Section shall not affect any right to formal review under Section 29 of the Act or to a citizen's suit under Section 32 of the Act.

SECTION 842.16 AVAILABILITY OF RECORDS

5-01-87

- (a) Copies of all records, reports, inspection materials, or information obtained by the Division under the Act, this Chapter, and the State program shall be made immediately available to the public in the area of mining until at least five years after expiration of the period during which the subject operation is active or is covered by any portion of a reclamation bond so that they are conveniently available to residents of that area, except that the Division may refuse to make available:
 - (1) Investigatory records compiled for law enforcement purposes to the extent provided in the Freedom of Information Act (Ark. Acts, Act 93 of 1967, as amended; Ark. Stat. Ann. 12-2801) and
 - (2) Information not required to be made available under Section 776.17, 786.15 or 842.16(c).
- (b) The Division shall make available to the OSM Director and to the Regional OSM Director, upon request, copies of all documents relating to applications for and approvals of existing, new, or revised coal exploration approvals or surface coal mining and reclamation operations permits and all documents relating to inspection and enforcement actions.
- (c) In order to protect preparations for hearings and enforcement proceedings, the OSM Director and the Director may enter into agreements regarding procedures for the special handling of investigative and enforcement reports and other such materials.

PART 843 -- ENFORCEMENT

SECTION

843.1	Scope
843.11	Cessation Orders
843.12	Notices Of Violation
843.13	Suspension or Revocation of Permits
843.14	Service of Notices of Violations and Cessation Orders
843.15	Informal Public Hearing
843.16	Formal Review of Citations
843.17	Lack of Information
843.18	Inability to Comply
843.19	Injunctive Relief

SECTION 843.1

SCOPE

5-29-80

This Part sets forth general rules regarding enforcement by the Division of the Act, this Chapter, the State program, and all conditions of permits and coal exploration approvals imposed under the State program, the Act, or this Chapter. Civil penalties in connection with notices of violation and cessation orders issued under this Part are set forth in Part 845.

SECTION 843.11

CESSATION ORDERS

6-03-92

(a)

- (1) An authorized representative of the Director shall immediately order a cessation of surface coal mining and reclamation operations or of the relevant portion thereof, if he finds, on the basis of any inspection, any condition or practice, or any violation of the Act, this Chapter, the State program, or any condition of an exploration approval or permit imposed under the State program, the Act, or this Chapter, which:
 - (i) Creates an imminent danger to the health or safety of the public; or
 - (ii) Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

- (2) Surface coal mining and reclamation operations conducted by any person without a valid surface coal mining permit constitutes a condition of practice which causes or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, unless such operations:
 - (i) Are an integral, uninterrupted extension of previously permitted operations, and the person conducting such operations has filed a timely and complete application for a permit to conduct such operations; or
 - (ii) Were conducted lawfully without a permit under the interim regulatory program because no permit has been required for such operations by the State in which the operations were conducted.
 - (3) If the cessation under Paragraph (a)(1) of this Section will not completely abate the imminent danger or harm in the most expeditious manner physically possible, the authorized representative of the Director shall impose affirmative obligations on the person to whom it is used to abate the condition, practice, or violation. The order shall specify the time by which abatement shall be accomplished and may require, among other things, the use of existing or additional personnel and equipment
- (b)
- (1) An authorized representative of the Director shall immediately order a cessation of coal exploration or surface coal mining and reclamation operations or of the relevant portion thereof, when a notice of violation has been issued under Section 843.12(a) and the person to whom it was issued fails to abate the violation within the abatement period fixed or subsequently extended by the authorized representative.
 - (2) A cessation order issued under this paragraph shall require the person to whom it is used to take all steps the authorized representative of the Director deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.
- (c)
- A cessation order issued under Paragraphs (a) or (b) of this Section shall be in writing, signed by the authorized representative who issues it, and shall set forth with reasonable specificity:
- (1) The nature of the violation;
 - (2) The remedial action or affirmative obligation required, if any, including interim steps, if appropriate;
 - (3) The time established for abatement, if appropriate, including the time for meeting

any interim steps; and

- (4) A reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies. The order shall remain in effect until the condition, practice or violation has been abated or until vacated, modified or terminated in writing by an authorized representative of the Director.
- (d) Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of any order unless otherwise provided in the order.
- (e) An authorized representative of the Director may modify, terminate or vacate a cessation order for good cause, and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the person to whom it was issued.
- (f) An authorized representative of the Director shall terminate a cessation order, by written notice to the person to whom the order was issued when he determines that all conditions, practices or violations listed in the order have been abated. Termination shall not affect the right of the Division to assess civil penalties for those violations under Part 845.
- (g) Within sixty (60) days after an authorized representative of the Director has issued a cessation order, the Director shall notify in writing any person who has been identified under Sections 778.13(b) and (d) and 786.27(d) of this chapter as owning or controlling the permittee, that the cessation order was issued and that the person has been identified as an owner or controller.

SECTION 843.12 NOTICES OF VIOLATION

5-25-85

- (a) An authorized representative of the Director shall issue a notice of violation if, on the basis of an inspection carried out during the enforcement of the State program, he finds a violation of the Act, this Chapter, the State program, or any condition of a permit or an exploration approval imposed under the State program, the Act, or this Chapter, which does not create an imminent danger or harm for which a cessation order must be issued under Section 843.11.
- (b) A notice of violation issued under this Section shall be in writing, signed by the authorized representative who issues it, and shall set forth with reasonable specificity
 - (1) The nature of the violation,

- (2) The remedial action required, which may include interim steps;
 - (3) A reasonable time for abatement, which may include time for accomplishment of interim steps; and
 - (4) A reasonable description of the portion of the coal exploration or surface coal mining and reclamation operations to which it applies.
- (c) An authorized representative of the Director may extend the time set for abatement or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the person to whom it was issued. The total time for abatement under a notice of violation, including all extensions, shall not exceed 90 days from the date of issuance, except upon a showing by the person that it is not feasible to abate the violation within 90 days due to one or more of the circumstances in paragraph (f) of this Section. An extended abatement date pursuant to this section shall not be granted when the person's failure to abate within 90 days has been caused by a lack of diligence or international delay by the person in completing the remedial action required.
- (d) If the person to whom the notice was issued fails to meet any time set for abatement or the accomplishment of an interim step, the authorized representative shall issue a cessation order under Section 843.11(b).
- (e) An authorized representative of the Director shall terminate a notice of violation by written notice to the person to whom it was issued, when he determines that all violations listed in the notice of violation have been abated. Termination shall not affect the right of the Division to assess civil penalties for those violations under Part 845 (Civil Penalties).
- (f) Circumstances which may qualify a surface coal mining operation for an abatement period of more than 90 days are:
- (1) Where the permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans but such permit or approval has not been or will not be issued within 90 days after a valid permit expires or is required, for reasons not within control of the person;
 - (2) Where there is a valid judicial order precluding abatement within 90 days as to which the person has diligently pursued all rights of appeal and as to which he or she has no other effective legal remedy;
 - (3) Where the person cannot abate within 90 days due to a labor strikes;
 - (4) Where climatic conditions preclude abatement within 90 days, or where due to climate conditions, abatement within 90 days clearly would cause more environmental harm than it would prevent; or

- (5) Where abatement within 90 days requires action that would violate safety standards established by statute or regulation under the mine Safety and Health Act of 1977.
- (g) Whenever an abatement time in excess of 90 days is permitted, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public or environment.
- (h) If any of the conditions in paragraph (f) of this Section exists, the person may request the authorized representative of the Director to grant an abatement period exceeding 90 days. The authorized representative shall not grant such an abatement period without the concurrence of the Director or his other designee, and the abatement period granted shall not exceed the shortest possible time necessary to abate the violation. The person shall have the burden of establishing by clear and convincing proof that he or she is entitled to an extension under the provisions of Section 843.12(c) and (f). In determining whether or not to grant an abatement period exceeding 90 days, the authorized representative may consider any relevant oral or written information from the person or other source. The authorized representative shall promptly and fully document in the file his or her reasons for granting or denying the request. The authorized representative's immediate supervisor shall promptly and fully document the reasons for his or her concurrence or disapproval in the file.
- (i) Any determination made under paragraph (h) of this Section shall contain a right to an adjudicatory hearing pursuant to the Act and Code.
- (j) No extension granted under paragraph (h) of this Section may exceed 90 days. Where the condition or circumstance which prevented abatement within 90 days exists at the expiration of any such extension; the person may request a further extension pursuant to paragraph (h) of this Section.

SECTION 843.13

SUSPENSION OR REVOCATION OF PERMITS

5-29-80

- (a)
 - (1) Except as provided in paragraph (b) of this Section, the Director shall issue an order to a permittee requiring him to show cause why his permit and right to mine under the Act should not be suspended or revoked, if the Director determines that a pattern of violations of any requirements of the Act, this Chapter, the State program or any permit condition required by the Act exists or has existed, and that the violations were caused by the permittee willfully or through unwarranted failure to comply with those requirements or conditions. Willful violation means an act or omission which violates the Act, this Chapter, the State program, or any permit condition required by the Act, this Chapter, or the State program, committed by a person who intends the result which actually occurs. Unwarranted

failure to comply means the failure of the permittee to prevent the occurrence of any violation of the permit or any requirement of the Act, due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the Act, due to indifference, lack of diligence, or lack of reasonable care. Violations by any person conducting surface coal mining operations on behalf of the permittee shall be attributed to the permittee, unless the permittee establishes that they were acts of deliberate sabotage.

- (2) The Director may determine that a pattern of violations exists or has existed, based on two or more inspections of the permit area within any 12-month period, after considering the circumstances, including:
 - (i) The number of violations, cited on more than one occasion, of the same or related requirements of the Act, this Chapter, the State program or the permit;
 - (ii) The number of violations, cited on more than one occasion, or different requirements of the Act, this Chapter, the State program, or the permit; and
 - (iii) The extent to which the violations were isolated departures from lawful conduct.
- (3) The Director shall determine that a pattern of violations exists, if he finds that there were violations of the same or related requirements of the Act, this Chapter, the State program, or the permit during three or more inspections of the permit area within any 12-month period.
- (4)
 - (i) in determining the number of violations within any 12-month period, the Director shall consider only violations issued as a result of an inspection carried out during the enforcement of the State program.
 - (ii) The Director may consider violations issued as a result of inspections other than those mentioned in clause (i) in determining whether to exercise his discretion under paragraph (2).
- (b) The Director may decline to issue a show cause order, or may vacate an outstanding show cause order, if he finds that, taking into account exceptional factors present in the particular case, it would be demonstrably unjust to issue or to fail to vacate the show cause order. The basis for this finding shall be fully explained and documented in the records of case.

- (c) At the same time as the issuance of the order, the Director shall
 - (1) File a copy of the order to show cause with the Commission;
 - (2) If practicable, publish notice of the order, including a brief statement of the procedure for intervention in the proceeding, in a newspaper of general circulation in the area of the surface coal mining and reclamation operations; and
 - (3) Post the notice at the central office and at the field office of the Division closest to the area of the surface coal mining and reclamation operations.
- (d) If the permittee files an answer to the show cause order and requests a hearing under Section 29 of the Act, a public hearing shall be provided. The presiding officer shall give 30 days written notice of the date, time, and place of the hearing to the Commission, the Director, the permittee, and any intervenor. Upon receipt of the notice, the Director shall publish it, if practicable, in a newspaper of general circulation in the area of the surface coal mining and reclamation operations, and shall post it at the field office of the Division which is closest to those operations.
- (e) A written determination of whether a pattern of violations exists, and if appropriate, an order, shall be issued by the Commission within 30 days after the hearing is held, and in accordance with Section 29 of the Act. If the Commission revokes or suspends the permit and the permittee's right to mine under the Act, the permittee shall immediately cease surface coal mining operations of the permit area and shall
 - (1) If the permit and the right to mine under the Act are revoked, complete reclamation within the time specified in the order; or
 - (2) If the permit and the right to mine under the Act are suspended, complete all affirmative obligations to abate all conditions, practices or violations, as specified in the order.

SECTION 843.14 SERVICE OF NOTICES OF VIOLATIONS AND CESSATION
ORDERS

5-29-80

- (a) A notice of violation or cessation order shall be served on the person to who it is directed or his designated agent promptly after issuance, as follows:
 - (1) By tendering a copy at the coal exploration or surface coal mining and reclamation operation to the designated agent or to the individual who, based upon reasonable inquiry by the authorized representative, appears to be in charge of the coal

exploration or surface coal mining and reclamation operation referred to in the notice or order. If no such individual can be located at the site, a copy may be tendered to any individual at the site who appears to be an employee or agent of the person to whom the notice or order is issued. Service shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept.

- (2) As an alternative to paragraph (a)(1) of this Section, service may be made by sending a copy of the notice or order by certified mail or by hand to the person to whom it is issued or his designated agent. Service shall be complete upon tender of the notice or order or of the mail and shall not be deemed incomplete because of refusal to accept.
- (b) A show cause order may be served on the person to whom it is used in either manner provided in paragraph (a)(2) of this Section.
- (c) Designation by any person of an agent for service of notices and orders shall be made in writing to the Director.
- (d) The Division may furnish copies to any person having an interest in the coal exploration, surface coal mining and reclamation operation, or the permit area, such as the owner of the fee, a corporate officer of the permittee or entity conducting coal exploration, or the bonding company.

SECTION 843.15 INFORMAL PUBLIC HEARING

5-29-80

- (a) Except as provided in Paragraphs (b) and (c), a notice of violation or cessation order which requires cessation of mining, expressly or by necessary implication, shall expire within 30 days after it is served unless an informal public hearing has been held within that time. The hearing shall be held at or reasonably close to the mine site so that it may be viewed during the hearing or at any other location acceptable to the Director and the person to whom the notice or order was issued. The field office of the Division nearest to the mine site shall be deemed to be reasonably close to the mine site unless a closer location is requested and agreed to by the Director. Expiration of a notice or order shall not affect the Director's right to assess civil penalties for the violations mentioned in the notice or order under Part 845 (civil penalties). For purposes of this Section, mining means extracting coal from the earth or coal waste piles and transporting it within or from the permit area.
- (b) A notice of violation or cessation order shall not expire as provided in Paragraph (a) of this Section, the condition, practice or violation in question has been abated or if the informal public hearing has been waived.

- (c) The Director shall give as much advance notice as is practicable of the time, place, and subject matter of the informal public hearing to
 - (1) The person to whom the notice or order was issued; and
 - (2) Any person who filed a report which led to that notice or order.
- (d) The Director shall also post notice of the hearing at the field office closest to the mine site, and publish it, where practicable, in a newspaper of general circulation in the area of the mine.
- (e) An informal public hearing shall be conducted by a representative of the Director, who may accept oral or written arguments and any other relevant information from any person attending.
- (f) Within five days after the close of the informal public hearing, the Director shall affirm, modify, or vacate the notice or order in writing. The decision shall be sent to:
 - (1) The person to whom the notice or order was issued; and
 - (2) Any person who filed a report which led to the notice or order.
- (g) The granting or waiver of an informal public hearing shall not affect the right of any person to formal review under Section 29 of the Act. At such formal review proceedings, no evidence as to statements made or evidence produced at an informal public hearing shall be introduced as evidence or to impeach a witness.

SECTION 843.16

FORMAL REVIEW OF CITATIONS

5-29-80

- (a) A person issued a notice of violation or cessation order under Section 843.11 or 843.12, or a person having an interest which is or may be adversely affected by the issuance, modification, vacation or termination of a notice or order, may request review of that action by filing an application for review and request for hearing under Section 29.
- (b)
 - (1) Upon receipt of such application, the Commission shall cause such investigation to be made as it deems appropriate. The filing of an application for review and request for a hearing shall not operate as a stay or any notice or order, or of any modification, termination, or vacation of either.

- (2) If an adjudicatory hearing is requested pursuant to Section 29 of the Act, the permittee and other interested persons shall be given written notice of the time and place of the hearing at least five days prior thereto.
- (c) Upon receiving the report of such investigation, the Commission shall make findings of fact, and shall issue a written decision, incorporating there in an order vacating, affirming, modifying or terminating the notice or order, or the modification, vacation, or termination of such notice or order complained of and incorporate his findings therein. Where the application or review concerns an order of cessation, the Commission shall issue the decision within thirty days of the receipt of the application or review unless temporary relief has been granted by the Commission pursuant to subparagraph (d) of this Section.
- (d) Pending completion of the investigation and hearing required by this Section, the applicant may file with the Commission a written request that the Commission grant temporary relief from the notice or order complained, together with a detailed statement giving reasons for granting such relief. The Commission shall issue an order or decision granting or denying such relief expeditiously; provided that, where the applicant requests relief from an order of cessation, the order or decision on such request shall be issued within five days of the receipt of the request. The Commission may grant such relief, under such conditions as it may prescribe, if:
 - (1) A hearing has been held in the locality of the permit area on the request for temporary relief in which all parties were given an opportunity to be heard;
 - (2) The applicant shows that there is substantial likelihood that the findings of the Commission will be favorable to him; and
 - (3) Such relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources.

SECTION 843.17 LACK OF INFORMATION

5-29-80

No notice of violation, cessation order, show cause order, or order revoking or suspending a permit may be vacated because it is subsequently determined that the Director did not have information sufficient, under Section 842.11(b)(1) and 842.11(b)(2), to justify an inspection.

SECTION 843.18 INABILITY TO COMPLY

5-29-80

- (a) No cessation order to notice of violation issued under this Part may be vacated because of inability to comply.

- (b) Inability to comply may not be considered in determining whether a pattern of violations exists.
- (c) Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of civil penalty under part 845 and of the duration of the suspension of a permit under Section 843.13(e).

SECTION 843.19 INJUNCTIVE RELIEF

5-29-80

The commission or the Director may institute in the chancery court of any county a civil action for relief in accordance with Section 25 of the Act.

PART 845 -- CIVIL PENALTIES

SECTION

845.1	Scope
845.2	Objective
845.11	How Assessments Are Made
845.12	When Penalty Will be Assessed
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845.14	Determination of Amount of Penalty
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845.20	Final Assessment and Payment of Penalty

SECTION 845.1

SCOPE

5-29-80

This Part covers the assessment of civil penalties under Section 18 of the Act with respect to cessation orders and notices of violation issued under Part 843 (Enforcement).

SECTION 845.2

OBJECTIVE

5-29-80

Civil penalties are assessed under Section 18 of the Act and this Part to deter violations and to ensure maximum compliance with the terms and purposes of the Act on the part of the coal mining industry.

SECTION 845.11

HOW ASSESSMENTS ARE MADE

5-29-80

The Director shall review each notice of violation and cessation order in accordance with the assessment procedures described in Sections 845.12 through 845.16 to determine whether a civil penalty will be assessed, the amount of the penalty, and whether each day of a continuing violation will be deemed a separate violation for purposes of the total penalty assessed.

SECTION 845.12

WHEN PENALTY WILL BE ASSESSED

5-01-87

- (a) The Director shall assess a penalty for each cessation order, except that if the Director issues a cessation order to suspend underground coal mining under urbanized areas, cities, towns, or communities, or adjacent to industrial or commercial buildings, major impoundments, or permanent streams upon a finding of imminent danger to the inhabitants of the urbanized areas, cities, towns or communities, a civil penalty shall not be issued.
- (b) The Director shall assess a penalty for each notice of violation, if the violation is assigned 31 points or more under the point system described in Section 845.13.
- (c) The Director may not assess a penalty for each notice of violation assigned 30 points or less under the point system described in Section 845.13. In determining whether to assess a penalty, the Director shall consider the factors listed in Section 845.13(b).

SECTION 845.13

POINT SYSTEM FOR PENALTIES

5-01-87

- (a) The Director shall use the point system described in this Section to determine the amount of the penalty and, in the case of notices of violation, whether a mandatory penalty should be assessed as provided in Section 845.12(b).
- (b) Points shall be assigned as follows
 - (1) History of previous violations. The Director shall assign up to 30 points based on the history of previous violations. One point shall be assigned for each past violation contained in a notice of violation. Five points shall be assigned for each violation (but not a condition or practice) contained in a cessation order. The history of previous violations, for the purpose of assigning points, shall be determined and the points assigned with respect to a particular coal exploration or surface coal mining operation. Points shall be assigned as follows
 - (i) A violation shall not be counted, if the notice or order is the subject of pending administrative or judicial review or if the time to request such review or to appeal any administrative or judicial decision has not expired, and thereafter it shall be counted for only one year;
 - (ii) No violation for which the notice or order has been vacated shall be counted; and
 - (iii) Each violation shall be counted without regard to whether it led to a civil penalty assessment.

(2) Seriousness. The Director shall assign up to 30 points based on the seriousness of the violation, as follows

(i) The Director shall assign up to 15 points based on the probability of the event which a violated standard is designed to prevent. Points shall be assessed according to the following schedule

PROBABILITY OF OCCURRENCE	POINTS
None	0
Insignificant	1-04
Unlikely	5-09
Likely	10-14
Occurred	15

(ii) Extent of potential or actual damage. The Director shall assign up to 15 points, based on the extent of the potential or actual damage, in terms of area and impact on the public or environment, as follows

(A) If the damage or impact which the violated standard is designed to prevent would remain within the coal exploration or permit area, the Director shall assign zero to seven points, depending on the duration and extent of the damage or impact.

(B) If the damage or impact which the violated standard is designed to prevent would extend outside the coal exploration or permit area, the Director shall assign eight to fifteen points, depending on the duration and extent of the damage or impact.

(iii) Alternative. In the case of a violation of an administrative requirement, such as a requirement to keep records, the Director shall, in lieu of Paragraphs (i) and (ii), assign up to 15 points for seriousness, based upon the extent to which enforcement is obstructed by the violation.

(3) Negligence

(i) The Director shall assign up to 25 points based on the degree of fault of the person to whom the notice or order was issued in causing or failing to correct the violation, condition, or practice which led to the notice or order, either through act or omission. Points shall be assessed as follows

- (A) A violation which occurs through no negligence shall be assigned no penalty points for negligence;
 - (B) A violation which is caused by negligence shall be assigned 12 points or less, depending on the degree of negligence;
 - (C) A violation which occurs through a greater degree of fault than negligence shall be assigned 13 to 25 points, depending on the degree of fault.
 - (ii) In determining the degree of negligence involved in a violation and the number of points to be assigned, the following definitions apply
 - (A) No negligence means an inadvertent violation which was unavoidable by the exercise of reasonable care.
 - (B) Negligence means the failure of a permittee to prevent the occurrence of any violation of his or her permit or any requirement of the Act or this Chapter due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the Act due to indifference, lack of diligence, or lack of reasonable care.
 - (C) A greater degree of fault than negligence means reckless, knowing, or intentional conduct.
 - (iii) In calculating points to be assigned for negligence, the acts of all persons working on the coal exploration or surface coal mining and reclamation site shall be attributed to the person to whom the notice or order was issued, unless that person establishes that they were acts of deliberate sabotage.
- (4) Good faith in attempting to achieve compliance.
- (i) The Director shall add points based on the degree of good faith of the person to whom the notice of order was issued in attempting to achieve rapid compliance after notification of the violation. Points shall be assigned as follows

DEGREE OF GOOD FAITH	POINTS
Rapid compliance	-1 to -10
Normal compliance	0

- (ii) The following definitions shall apply under Paragraph (b)(4)(i) of this Section
 - (A) Rapid compliance means that the person to whom the notice or order was issued took extraordinary measures to abate the violation in the shortest possible time and that abatement was achieved before the time set for abatement.
 - (B) Normal compliance means the person to whom the notice or order was issued abated the violation within the time given for abatement.
- (iii) If the consideration of this criterion is impractical because of the length of the abatement period, the assessment may be made without considering this criterion and may be reassessed after the violation has been abated.

The Director shall determine the amount of any civil penalty by converting the total number of points assigned under Section 845.13 to a dollar amount, according to the following schedule

POINTS	DOLLARS	POINTS	DOLLARS
1	20	37	\$1,700
2	40	38	1,800
3	60	39	1,900
4	80	40	2,000
5	100	41	2,100
6	120	42	2,200
7	140	43	2,300
8	160	44	2,400
9	180	45	2,500
10	200	46	2,600
11	220	47	2,700
12	240	48	2,800
13	260	49	2,900
14	280	50	3,000
15	300	51	3,100
16	320	52	3,200
17	340	53	3,300
18	360	54	3,400
19	380	55	3,500
20	400	56	3,600
21	420	57	3,700
22	440	58	3,800
23	460	59	3,900
24	480	60	4,000
25	500	61	4,100
26	600	62	4,200
27	700	63	4,300
28	800	64	4,400
29	900	65	4,500
30	1,000	66	4,600
31	1,100	67	4,700
32	1,200	68	4,800
33	1,300	69	4,900
34	1,400	70	5,000
35	1,500	and	
36	1,600	above	

- (a) The Director may assess separately a civil penalty for each day from the date of issuance of the notice of violation or cessation order to the date set for abatement of the violation. In determining whether to make such an assessment, the Director shall consider the factors listed in Section 845.13 and may consider the extent to which the person to whom the notice or order was issued gained any economic benefit as a result of a failure to comply. For any violation which continues for two or more days and which is assigned more than 70 points under Section 845.13(b), the Director shall assess a civil penalty for a minimum of two separate days.
- (b) Whenever a violation contained in a notice of violation or cessation order has not been abated within the abatement period set in the notice or order, a civil penalty of not less than \$ 750 shall be assessed for each day during which such failure continues, except that, if the person to whom the notice or order was issued initiates review proceedings with respect to the violation, the abatement period shall be extended as follows
 - (1)
 - (i) If suspension of the abatement requirements of the notice or order is ordered in a temporary relief proceeding under Section 29 of the Act, after a determination that the person to whom the notice or order was issued will suffer irreparable loss or damage from the application of the requirements, the period permitted for abatement shall not end until the date on which the Commission issues a final order with respect to the violation in question; and
 - (ii) If the person to whom the notice or order was issued initiates review proceedings under Section 30 of the Act with respect to the violation, in which the obligations to abate are suspended by the court pursuant to Section 30 of the Act, the daily assessment of a penalty shall not be made for any period before entry of a final order by the court.
 - (2) Such penalty for the failure to abate the violation shall not be assessed for more than 30 days for each such violation. If the permittee has not abated the violation within the 30-day period, the Director shall take appropriate action pursuant to Section 19, 20, 24, or 25 of the Act within 30 days to ensure that abatement occurs or to ensure that there will not be a re-occurrence of the failure to abate.

SECTION 845.16

WAIVER OF USE OF FORMULA TO DETERMINE CIVIL
PENALTY

5-29-80

- (a) The Director, upon his own initiative or upon written request received within fifteen days of issuance of a notice of violation or a cessation order, may waive the use of the formula contained in Section 845.13 to set the civil penalty, if he or she determines that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust. However, the Director shall not waive the use of the formula or reduce the proposed assessment on the basis of an argument that a reduction in the proposed penalty could be used to abate violations of the Act, this Chapter, the State program, or any condition of any permit or exploration approval. The basis for every waiver shall be fully explained and documented in the records of the case.
- (b) If the Director waives the use of the formula, he or she shall use the criteria set forth in Section 845.13(b) to determine the appropriate penalty. When the Director has elected to waive the use of the formula, he or she shall give a written explanation of the basis for the assessment made to the person to whom the notice or order was issued.

SECTION 845.17

PROCEDURES FOR ASSESSMENT OF CIVIL PENALTIES

5-29-80

- (a) Within fifteen days of service of a notice or order, the person to whom it was issued may submit written information about the violation to the Director who issued the notice of violation or cessation order. The Director shall consider any information so submitted in determining the facts surrounding the violation and the amount of the penalty.
- (b) The Director shall serve a copy of the proposed assessment and of the worksheet showing the computation of the proposed assessment on the person to whom the notice or order was issued, by certified mail, within thirty days of the issuance of the notice or order. If the mail is tendered at the address of that person set forth in the sign required under Section 816.11, or at any address at which that person is in fact located, and he or she refuses to accept delivery of or to collect such mail, the requirements of this Paragraph shall be deemed to have been complied with upon such tender.
- (c) Unless an adjudicatory hearing has been requested, the Director shall review and reassess any penalty if necessary to consider facts which were not reasonably available on the date of issuance of the proposed assessment because of the length of the abatement period. The Director shall serve a copy of any such reassessment in the manner provided in Paragraph (b), within thirty days after the date the violation is abated.

- (a) The Arkansas Pollution Control and Ecology Commission (Commission) shall arrange for a conference to review the proposed assessment or reassessment, upon written request of the person to whom notice or order was issued, if the request is received within 15 days from the date the proposed assessment or reassessment is mailed.
- (b)
 - (1) The Commission shall assign a conference officer to hold the assessment conference. The assessment conference shall not be governed by Section 29 of the Arkansas Surface Coal Mining and Reclamation Act of 1979 or by Section 554 of Title 5 of the United States Code, regarding requirements for formal adjudicatory hearings. The assessment conference shall be held within 60 days from the date the conference request is received or the end of the abatement period, whichever is later, provided:

That a failure by the Commission to hold such conference within 60 days shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty has been assessed proves actual prejudice as a result of the delay.
 - (2) The Commission shall post notice of the time and place conference at the field office closest to the mine at least 5 days before the conference. Any person shall have a right to attend and participate in the conference.
 - (3) The conference officer shall consider all relevant information on the violation. Within 30 days after the conference is held, the conference officer shall either:
 - (i) Settle the issues, in which case a settlement agreement shall be prepared and signed by the conference officer on the behalf of the Commission and by the person assessed; or
 - (ii) Affirm, raise, lower, or vacate the penalty.
 - (4) An increase or reduction of a proposed civil penalty assessment of more than 25 percent and more than \$500 shall not be final and binding on the Director, until approved by the Mining Division Chief or his or her designee.
- (c) The conference officer shall promptly serve the person assessed with a notice of his or her action in the manner provided in 845.17(b) of the Arkansas Surface Mining Enforcement and Reclamation Final Regulations and shall include a worksheet if the penalty has been raised or lowered. The reasons for the conference officer's action shall be fully documented in the file.
- (d)

- (1) If a settlement agreement is entered into, the person assessed will be deemed to have waived all rights to further review of the violation or penalty in question, except as otherwise expressly provided for in the settlement agreement. The settlement agreement shall contain a clause to this effect.
- (2) If full payment of the amount specified in the settlement agreement is not received by the Commission within 30 days after the date of signing, the Commission may enforce the agreement or rescind it and proceed according to Paragraph (b)(3)(ii) within 30 days from the date of the rescission.
- (e) The conference officer may terminate the conference when he or she determines that the issues cannot be resolved or that the person assessed is not diligently working toward resolution of the issues.
- (f) At formal review proceedings under Sections 18, 19, 20, 21, 24, and 30 of Arkansas Surface Coal Mining and Reclamation Act of 1979, no evidence as to statements made or evidence produced by one party at a conference shall be introduced as evidence by another party or to impeach a witness.

SECTION 845.19

REQUEST FOR ADJUDICATORY PUBLIC HEARING

5-27-99

- (a) The person charged with the violation may contest the proposed penalty or the fact of the violation by submitting a petition and an amount equal to the proposed penalty or, if a conference has been held, the reassessed or affirmed penalty to the Director (to be held in escrow as provided in Paragraph (b) of this Section) within 30 days receipt of the proposed assessment or reassessment or 30 days from the date of service of the conference officer's action, whichever is later. The fact of the violation may not be contested if it has been decided in a review proceeding commenced under Section 843.16 of the Code.
- (b) The Director shall hold all funds in escrow pending completion of the administrative and judicial review process, at which time he shall disburse them as provided in Section 845.20

SECTION 845.20

FINAL ASSESSMENT AND PAYMENT OF PENALTY

5-25-85

- (a) If the person to whom a notice of violation or cessation order is issued fails to request a hearing as provided in Section 845.19, the proposed assessment shall become a final order of the Director and the penalty assessed shall become due and payable upon expiration of the time allowed to request a hearing.

- (b) If any party requests judicial review of the final order of the Director, the proposed penalty shall continue to be held in escrow until completion of the review. Otherwise, subject to Paragraph (c) of this Section, the escrowed funds shall be transferred to the Division in payment of the penalty, and the escrow shall end.
- (c) If the final decision in the administrative and judicial review results in an order reducing or eliminating the proposed penalty assessment under this Part, the Division shall within 30 days of receipt of the order refund to the person assessed all or part of the escrowed amount.
- (d) If the review results in an order increasing the penalty, the person to whom the notice or order was issued shall pay the difference to the Division within 15 days after the order is mailed to such person.

PART 846 -- INDIVIDUAL CIVIL PENALTIES

SECTION

846.1	Scope
846.5	Definitions
846.12	When an Individual Civil Penalty May Be Assessed
846.14	Amount of Individual Civil Penalty
846.17	Procedure for Assessment of Individual Civil Penalty
846.18	Payment of Penalty

SECTION 846.1 SCOPE

11-14-89

This part covers the assessment of individual civil penalties under Section 20 of the Act.

SECTION 846.5 DEFINITIONS

11-14-89

For purposes of this part:

Knowingly means that an individual knew or had reason to know in authorizing, ordering or carrying an act or omission on the part of a corporate permittee that such act or omission constituted a violation, failure or refusal.

Violation, failure or refusal means –

- (1) A violation of a condition of a permit issued pursuant to the State program in accordance with Section 22 of the Act; or
- (2) A failure or refusal to comply with any order issued under Section 22 of the Act, or any order incorporated in a final decision issued by the Director under the Act, except an order incorporated in a decision issued under Section 29 of the Act.

Willfully means that an individual acted –

- (1) Either intentionally, voluntarily or consciously, and
- (2) With intentional disregard or plain indifference to legal requirements in authorizing, ordering or carrying out a corporate permittee's action or omission that constituted a violation, failure or refusal.

SECTION 846.12

WHEN AN INDIVIDUAL CIVIL PENALTY MAY BE
ASSESSED

11-14-89

- (a) Except as provided in paragraph (b) of this section, the Division may assess an individual civil penalty against any corporate director, officer or agent of a corporate permittee who knowingly and willfully authorized, ordered or carried out a violation, failure or refusal.
- (b) The Division shall not assess an individual civil penalty in situations resulting from a permit violation by a corporate permittee until a cessation order has been issued by the Division to the corporate permittee for the violation, and the cessation order has remained unabated for 30 days.

SECTION 846.14

AMOUNT OF INDIVIDUAL CIVIL PENALTY

11-14-89

- (a) In determining the amount of an individual civil penalty assessed under 846.12, the Division shall consider the criteria specified in Section 18 of the Act, including:
 - (1) The individual's history of authorizing, ordering or carrying out previous violations, failures or refusals at the particular surface coal mining operation;
 - (2) The seriousness of the violation, failure or refusal (as indicated by the extent of damage and/or the cost of reclamation), including any irreparable harm to the environment and any hazard to the health or safety of the public; and
 - (3) The demonstrated good faith of the individual charged in attempting to achieve rapid compliance after notice of the violation, failure or refusal.
- (b) The penalty shall not exceed \$5,000 for each violation. Each day of a continuing violation may be deemed a separate violation and the Division may assess a separate individual civil penalty for each day the violation, failure or refusal continues, from the date of service of the underlying notice of violation, cessation order or other order incorporated in a final decision issued by the Director until abatement or compliance is achieved.

SECTION 846.17

PROCEDURE FOR ASSESSMENT OF INDIVIDUAL CIVIL
PENALTY

11-14-89

- (a) Notice. The Division shall serve on each individual to be assessed an individual civil penalty a notice of proposed individual civil penalty assessment, including a narrative explanation of the reasons for the penalty, the amount to be assessed, and a copy of any underlying notice of violation and cessation order.
- (b) Final order and opportunity for review. The notice of proposed individual civil penalty assessment shall become a final order of the Director 30 days after service upon the individual unless:
 - (1) The individual files within 30 days of service of the notice of proposed individual civil penalty assessment a petition for review with the Division.
 - (2) The Division and the individual or responsible corporate permittee agree within 30 days of service of the notice of proposed individual civil penalty assessment to a schedule or plan for the abatement or correction of the violation, failure or refusal.
- (c) Service. For purpose of this section, service is sufficient if it would satisfy Rule 4 of the Federal Rules of Civil Procedure for service of a summons and complaint.

SECTION 846.18

PAYMENT OF PENALTY

11-14-90

- (a) No abatement or appeal. If a notice or proposed individual civil penalty assessment becomes a final order in the absence of a petition for review or abatement agreement, the penalty shall be due upon issuance of the final order.
- (b) Appeal. If an individual named in a notice of proposed individual civil penalty assessment files a petition for review in accordance with 43 CFR 4.1300 et seq., the penalty shall be due upon issuance of a final administrative order affirming, increasing or decreasing the proposed penalty.
- (c) Abatement agreement. Where the Division and the corporate permittee or individual have agreed in writing on a plan for the abatement of or compliance with the unabated order, an individual named in a notice of proposed individual civil penalty assessment may postpone payment until receiving either a final order from the Division stating that the penalty is due on the date of such final order, or written notice that abatement or compliance is satisfactory and the penalty has been withdrawn.

SUBCHAPTER M -- TRAINING PROGRAMS FOR BLASTERS AND MEMBERS OF BLASTING CREWS, AND CERTIFICATION PROGRAMS FOR BLASTERS

PART 850 -- PROGRAMS

SECTION

850.1	Scope
850.5	Definitions
850.12	Responsibility
850.13	Training
850.14	Examination
850.15	Certification

SECTION 850.1 SCOPE

5-27-99

This Part establishes the requirements and procedures applicable to the development of Division of Environmental Quality (DEQ) programs for training, examination, and certification of persons engaging in or directly responsible for the use of explosives in surface coal mining operations.

SECTION 850.5 DEFINITIONS

12-17-84

As used in this Part

Blaster means a person who is certified to prepare, execute, and supervise blasts at the blast site in surface coal mining and reclamation operations.

SECTION 850.12 RESPONSIBILITY

5-27-99

- (a) DEQ is responsible for promulgating rules in governing the training, examination, certification and enforcement of a blaster certification program for surface coal mining operations. DEQ shall submit these rules to OSM for approval under Parts 731 & 732 of the Chapter.
- (b) DEQ has developed a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation which is consistent with current Federal Regulations.

- (a) DEQ has established procedures which require that
 - (1) Persons seeking to become certified blasters receive training including, but not limited to, the technical aspects of blasting operations and State and Federal laws governing the storage, transportation, and use of explosives; and
 - (2) Persons who are not certified and who are assigned to a blasting crew or assist in the use of explosives receive direction and on-the-job training from a blaster.
- (b) DEQ shall ensure that courses are available to train persons responsible for the use of explosives in surface coal mining operations. The courses shall provide training and discuss practical applications of –
 - (1) Explosives, including –
 - (i) Selection of the type of explosives to be used;
 - (ii) Determination of the properties of explosives which will produce desired results at an acceptable level of risk; and
 - (iii) Handling, transportation, and storage;
 - (2) Blast designs, including –
 - (i) Geological and topographical considerations;
 - (ii) Design of a blast hole, with critical dimensions;
 - (iii) Pattern design, field layout, and timing of blast holes; and
 - (iv) Field applications;
 - (3) Loading blast holes, including priming and boosting;
 - (4) Initiation systems and blasting machines;
 - (5) Blasting vibrations, airblast, and flyrock, including –
 - (i) Monitoring techniques, and
 - (ii) Methods to control adverse effects;

- (6) Secondary blasting applications;
- (7) Current Federal & State rules applicable to the use of explosives;
- (8) Blast records;
- (9) Schedules;
- (10) Preblasting surveys, including –
 - (i) Availability,
 - (ii) Coverage, and
 - (iii) Use of in-blast design;
- (11) Blast plan requirements;
- (12) Certification and training;
- (13) Signs, warning signals and site control;
- (14) Unpredictable hazards, including –
 - (i) Lightning,
 - (ii) Stray currents,
 - (iii) Radio waves, and
 - (iv) Misfires.

SECTION 850.14 EXAMINATION

5-27-99

- (a) DEQ shall ensure that candidates for blaster certification are examined by reviewing and verifying the
 - (1) Competence of persons directly responsible for the use of explosives in surface coal mining operations through a written examination in technical aspects of blasting and State and Federal laws governing the storage use, and transportation of explosives; and

- (2) Practical field experience of the candidates as necessary to qualify a person to accept the responsibility for blasting operations in surface coal mining operations. Such experience shall demonstrate that the candidate possesses practical knowledge of blasting techniques; understands the hazards involved in the use of explosives and otherwise has exhibited a pattern of conduct consistent with the acceptance of responsibility for blasting operations.
 - (3) Oklahoma Training Institute (OMTI) will administer the test for the State of Arkansas.
- (b) Application for blaster certification shall be examined at a minimum, in topics set forth in Section 850.13(b).

SECTION 850.15 CERTIFICATION

5-27-99

- (a) Issuance of Certification. DEQ shall certify for a 3 year period those candidates examined and found to be competent and to have the necessary experience to accept responsibility for blasting operations in a surface coal mining operation.
- (b) Suspension and Revocation.
- (1) DEQ when practicable, following written notice and opportunity for a hearing may, and upon finding of willful conduct, shall suspend or revoke the certification of a blaster during the term of the certification or take other necessary action for any of the following reasons.
 - (i) Noncompliance with any order of the regulatory authority.
 - (ii) Unlawful use in the work place of, or current addiction to, alcohol, narcotics, or other dangerous drugs.
 - (iii) Violation of any provision of the State or Federal explosives laws or regulation.
 - (iv) Providing false information or misrepresentation to obtain certification.
 - (2) If advance notice and opportunity for hearing cannot be provided, an opportunity for a hearing shall be provided as soon as practical following the suspension, revocation, or other adverse action.

- (3) Upon notice of a revocation, the blaster shall immediately surrender to the Division the revoked certificate.
- (c) Recertification. Recertification of all blasters will occur prior to the expiration of the current certification. When such recertification applicants present a valid certification certificate the applicant need only to complete the refresher training and testing. Recertification shall be conducted once every three years.
- (d) Protection of Certification. Certified blasters shall take every reasonable precaution to protect their certificates from loss, theft, or unauthorized duplication. Any such occurrence shall be reported immediately to DEQ.
- (e) Conditions. DEQ shall specify conditions for maintaining certification which shall include the following:
 - (1) A blaster shall immediately exhibit his or her certificate to any authorized representative of DEQ or OSM upon request.
 - (2) Blasters certification shall not be assigned or transferred.
 - (3) Blasters shall not delegate their responsibility to any individual who is not a certified blaster.

SUBCHAPTER R -- ABANDONED MINE LAND RECLAMATION

PART 872 -- ABANDONED MINE RECLAMATION FUNDS

SECTION

872.1	Scope
872.2	Objectives
872.4	Responsibilities
872.5	Definitions
872.12	State Abandoned Mine Reclamation Fund

SECTION 872.1 SCOPE

5-29-80

- (a) This Part sets forth general responsibilities for administration of State Abandoned Mine Land Reclamation Program and procedures for the State Abandoned Mine Reclamation Fund to finance such program.
- (b) Included in this Part are general provisions describing
 - (1) The source of money and use of such monies to administer the State Abandoned Mine Land Reclamation Program; and
 - (2) The general responsibilities of agencies of the State in the conduct of this program.

SECTION 872.2 OBJECTIVES

5-29-80

The objectives of this Part are to provide an overview of the State Abandoned Mine Land Reclamation Program responsibilities and to provide detailed procedures for administration of State Abandoned Mine Land Reclamation Fund.

SECTION 872.4 RESPONSIBILITIES

5-29-80

The Director is responsible for

- (a) Preparing and submitting a State Reclamation Plan to the OSM Director if the State elects to participate in the Abandoned Mine Land Reclamation Program;

- (b) Establishing a State Abandoned Mine Reclamation Fund for use in conducting the State Reclamation Program;
- (c) Submitting annual applications for grants, including descriptions of proposed projects;
- (d) Submitting requests to the OSM Regional Director for work to be done on noncoal mined lands;
- (e) Submitting requests of the OSM Regional Director for construction of specific facilities in communities impacted by coal development.
- (f) Conducting reclamation work in accordance with grant agreements;
- (g) Consulting with State and Federal agencies as necessary and developing cooperative agreements with the appropriate surface management agency when State or Federal lands are considered for inclusion in a State Reclamation Program; and
- (h) Submitting reports annually to the OSM Regional Director describing progress on previously funded projects.

SECTION 872.5

DEFINITIONS

5-29-80

- (a) The Abandoned Mine Reclamation Fund, or Fund is a trust fund established on the books of the U.S. Treasury for the purpose of accumulating revenue designated for reclamation of abandoned mine lands and other activities authorized by Public Law 95-87.
- (b) Allocate means the administrative identification in the records of the OSM of moneys in the Fund for a specific purpose: e.g., identification of moneys for exclusive use by a State.
- (c) Emergency means a sudden danger or impairment that presents a high probability of substantial physical harm to the health, safety, or general welfare of people before the danger can be abated under normal program operation procedures.
- (d) Expended means that moneys have been paid out by the State for work that has been accomplished or services rendered.
- (e) Extreme danger means a condition that could reasonably be expected to cause substantial physical harm to persons, property, or the environment and to which persons or improvements on real property are currently exposed.

- (f) Reclamation activities means restoration, reclamation, abatement, control, or prevention of adverse effects of mining.
- (g) State Abandoned Mine Reclamation Fund or State Fund, means separate fund established by the State for the purpose of accounting for moneys granted by the OSM Director under an approved State Reclamation Program and other moneys authorized by these rules to be deposited in the State Fund.
- (h) State Abandoned Mine Reclamation Program, or State Reclamation Plan or State Reclamation Program, means the program established by the State in accordance with this Chapter for reclamation of land and water adversely affected by past mining, including the reclamation plan and annual applications for grants under the plan.

SECTION 872.12

STATE ABANDONED MINE RECLAMATION FUND

5-29-80

- (a) An account to be known as the State Abandoned Mine Reclamation Fund shall be established under the State Reclamation Plan. The State Fund shall be managed in accordance with Office of Management and Budget Circular No. A-102.
- (b) Revenue to the State Fund shall include
 - (1) Amounts granted to the Division by OSM for purposes of conducting the State Reclamation Plan.
 - (2) Moneys collected by the Division from charges for uses of lands acquired or reclaimed with moneys from the State Fund under Part 879.
 - (3) Moneys recovered by the Division through the satisfaction of liens filed against privately owned lands reclaimed with moneys from the State Fund under Part 882.
 - (4) Moneys recovered by the Division from the sale of lands acquired with moneys from the State Fund under Part 879.
 - (5) Such other moneys as the State decides should be deposited in the State Fund for use in carrying out the State Reclamation Program.
- (c) Moneys deposited in the State Fund to be used to carry out the State Reclamation Plan may be used for the following purposes:
 - (1) Reclamation and restoration of land and water resources adversely affected by past coal mining, including but not limited to reclamation and restoration of abandoned surface mines, abandoned coal processing areas, and abandoned coal refuse

disposal areas; sealing and filling abandoned deep mine entries and voids; planting of land adversely affected by past coal mining to prevent erosion and sedimentation; prevention, abatement, treatment, and control of water pollution created by coal mine drainage including restoration of stream beds, and construction and operation of water treatment plants; prevention, abatement, and control of burning coal refuse disposal areas and burning coal in situ; and prevention, abatement, and control of coal mine subsidence;

- (2) Acquisition and filling of voids and sealing of tunnels, shafts, and entry ways;
- (3) Acquisition of land as provided for in Section 879;
- (4) Restoration, reclamation, abatement, control, or prevention of adverse affects of coal mining which constitutes an emergency as provided for in Section 877.14;
- (5) Administration expenses to accomplish the purposes of the State Reclamation Plan;
- (6) All other necessary expenses to accomplish the purposes of the State Reclamation Plan.

PART 874 -- GENERAL RECLAMATION REQUIREMENTS

SECTION

874.1	Scope
874.2	Objectives
874.5	Definitions
874.11	Applicability
874.12	Eligible Lands and Water
874.13	Reclamation Objectives and Priorities
874.14	Reclamation Project Evaluation

SECTION 874.1 SCOPE

5-29-80

This Part establishes general requirements for the selection of work to be performed with moneys from the State Abandoned Mine Reclamation Fund. It includes land and water eligibility requirements, reclamation project objectives and standards, and project selection and evaluation factors.

SECTION 874.2 OBJECTIVES

5-29-80

The objectives of this Part are to establish conditions for the use of State Abandoned Mine Reclamation Funds.

SECTION 874.5 DEFINITIONS

12-05-97

Left or abandoned in either an unreclaimed or inadequately reclaimed condition means lands and water:

- (a) Which were mined or which were affected by such mining, wastebanks, processing or other mining processes prior to August 3, 1977, or between August 3, 1977 and November 5, 1990, as authorized pursuant to Section 6 of the Act, and on which all mining has ceased;
- (b) Which continue, in their present condition, to substantially degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health or safety of the public; and

- (c) For which there is no continuing reclamation responsibility under state or Federal Laws, except as provided in Section 6 of the Act.

SECTION 874.11 APPLICABILITY

5-29-80

The provisions of this Part apply to all reclamation projects to be carried out with money from the State Fund.

SECTION 874.12 ELIGIBLE LANDS AND WATER

12-05-97

- (a) Lands and water are eligible for reclamation activities if:
 - (1) They were mined or affected by mining processes;
 - (2) They were mined prior to August 3, 1977, and left or abandoned in either an unreclaimed or inadequately reclaimed condition; and
 - (3) There is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under statutes of the State or Federal Government, or the State as a result of bond forfeiture. Bond forfeiture will render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation. In cases where the forfeited bond is insufficient to pay the total cost of reclamation, additional moneys from the Fund may be sought under 30 CFR 886.
 - (4) Notwithstanding paragraphs (a)(1),(a)(2), and (a)(3) of this section, coal lands and waters damaged and abandoned after August 3, 1977, by coal mining processes are also eligible for funding if the Director finds in writing that:
 - (i) They were mined for coal or affected by coal mining processes; and
 - (ii) The mining occurred and the site was left in either an unreclaimed or inadequately reclaimed condition between August 4, 1977 and:
 - (A) November 21, 1980, and that any funds for reclamation or abatement that are available pursuant to a bond or other form of financial guarantee or from any other source are not sufficient to provide for adequate reclamation or abatement at the site; or

- (B) November 5, 1990, that the surety of the mining operator became insolvent during such period and that, as of November 5, 1990, funds immediately available from proceedings relating to such insolvency or from any financial guarantee or other source are not sufficient to provide for adequate reclamation or abatement at the site; and
 - (iii) The site qualifies as a priority 1 or 2 site pursuant to Section 7 of the Act. Priority will be given to those sites that are in the immediate vicinity of a residential area or that have an adverse economic impact upon a community.
- (5) The Director may expend funds made available under sections 402(g)(1) and (5) of SMCRA for reclamation and abatement of any site eligible under paragraph (a)(4) of this section, if the Director, with the concurrence of the Secretary, makes the findings required in paragraph (a) (4) of this section and the Director determines that the reclamation priority of the site is the same or more urgent than the reclamation priority for the lands and water eligible pursuant to paragraphs (a)(1), (a)(2) or (a)(3) of this section that qualify as a priority 1 or 2 sit under Section 7 of the Act.
- (6) With respect to lands eligible pursuant to paragraph (a)(4) or (a)(5) of this section, monies available from sources outside the Abandoned Mine Reclamation Fund or that are ultimately recovered from responsible parties shall either be used to offset the cost of the reclamation or transferred to the Abandoned Mine Reclamation Fund if not required for further reclamation activities at the permitted site.
- (7) If reclamation of a site covered by an interim or permanent program permit is carried out under the Abandoned Mine Land Program, the permittee of the site shall reimburse the Abandoned Mine Land Fund for the cost of reclamation that is in excess of any bond forfeited to ensure reclamation. The Division, performing reclamation under paragraph (a)(4) or (a)(5) of this section, shall not be held liable for any violations of any performance standards or reclamation requirements specified in Section 15 of the Act nor shall a reclamation activity undertaken on such lands or waters be held to any standards set forth in Section 15 of the Act.
- (8) Surface coal mining operations on lands eligible for remining pursuant to Section 6 of the Act shall not affect the eligibility of such lands for reclamation activities after the release of the bonds or deposits posted by any such operation as provided by Section 800.40 of this Chapter. If the bond or deposit for a surface coal mining operation on lands eligible for remining is forfeited, funds available under Title IV of Public Law 95-87 may be used if the amount of such bond or deposit is not sufficient to provide for adequate reclamation or abatement, except that if conditions warrant the Secretary shall immediately exercise his/her authority under

Section 410 of Public Law 95-87.

- (b) Lands and water which were mined or affected by mining for minerals and materials other than coal shall be eligible for reclamation activities under the State Reclamation Program if the OSM Director finds in writing that
 - (1) The conditions of Paragraph (a) of this Section have been met;
 - (2) The reclamation has been requested by the Governor of the State;
 - (3) All reclamation with respect to abandoned coal mine land and water has been accomplished within the State in which they are located or the reclamation is necessary for the protection of the public health and safety; and
 - (4) Moneys allocated to the State under 30 CFR 872.11(b)(2) and (3) are available for the work.

SECTION 874.13

RECLAMATION OBJECTIVES AND PRIORITIES

5-29-80

Reclamation projects shall meet one or more of the objectives stated in this Section. The objectives are stated in the order of priority with the highest priority first. Preference among those projects competing for available resources shall be given to projects meeting higher priority objectives.

- (a) Protection of public health, safety, general welfare and property from extreme danger resulting from the adverse effects of past coal mining practices.
- (b) Protection of public health, safety, and general welfare from adverse effects of past coal mining practices which do not constitute an extreme danger.
- (c) Restoration of eligible land and water and the environment previously degraded by adverse effects of past coal mining practices, including measures for the conservation and development of soil, water (excluding channelization) woodland, fish and wildlife, recreation resources, and agricultural productivity.
- (d) Research and demonstration projects relating to the development of surface coal mining reclamation and water quality control program methods and techniques.
- (e) Protection, repair, replacement, construction, or enhancement of public facilities such as utilities, roads, recreation, and conservation facilities adversely affected by past coal mining practices.
- (f) Development of publicly owned land adversely affected by past coal mining practices, including land acquired under Part 879, for recreation and historic purposes, conservation, and reclamation purposes and open space benefits.

- (g) Protection of the public from hazards endangering life and property resulting from the adverse effects of past noncoal mining practices. However, upon the request of the Governor of the State, such work may be undertaken before the priorities related to past coal mining have been fulfilled.
- (h) Protection of the public from hazards to health and safety from the adverse effects of past noncoal mining practices.
- (i) Restoration of the environment degraded by the adverse effects of past noncoal mining.
- (j) Construction of public facilities in communities impacted by coal development if the Governor of the State certifies that all other objectives of the fund have been met, the available impact funds are inadequate for such construction consistent with 30 CFR 884.12(d) and the Director of OSM concurs.

SECTION 874.14

RECLAMATION PROJECT EVALUATION

5-29-80

- (a) Proposed reclamation projects and completed reclamation work shall be evaluated in terms of the factors stated in this Section. The factors shall be used to determine whether or not proposed reclamation will be undertaken and to assign priorities to proposals intended to meet the same objective under Section 874.13. Completed reclamation shall be evaluated in terms of the factors set forth below as a means of identifying conditions which should be avoided, corrected, or improved in plans for future reclamation work. The factors shall include:
 - (1) The need for reclamation work to accomplish one or more specific reclamation objectives as stated in Section 874.13.
 - (2) The availability of technology to accomplish the reclamation work with reasonable assurance of success. In the case of research and demonstration projects, the research capability and plans shall provide reasonable assurance of beneficial results without residual adverse impacts.
 - (3) The specific benefits of reclamation which are desirable in the area in which the work will be carried out. Benefits to be considered include but are not limited to
 - (i) Protection of human life, health, or safety.
 - (ii) Protection of the environment, including air and water quality, abatement of erosion and sedimentation, fish, wildlife, and plant habitat, visual beauty, historic or cultural resources and recreation resources.

- (iii) Protection of public or private property.
- (iv) Abate adverse social and economic impacts of past mining on persons or property including employment, income, and land values or uses, or assistance to persons disabled, displaced or dislocated by past mining practices.
- (v) Improvement of environmental conditions which may be considered to generally enhance the quality of human life.
- (vi) Improvement of the use of natural resources, including post-reclamation land uses which
 - (A) Increase the productive capability of the land to be reclaimed.
 - (B) Enhance the use of surrounding lands consistent with existing land use plans.
 - (C) Provide for construction or enhancement of public facilities.
 - (D) Provide for residential, commercial, or industrial developments consistent with the needs and plans of the community in which the site is located.
- (vii) Demonstration to the public and industry of methods and technologies which can be used to reclaim areas disturbed by mining.
- (4) The acceptability of any additional adverse impacts to people or the environment that will occur during or after reclamation and of uncorrected conditions, if any, that will continue to exist after reclamation.
- (5) The costs of reclamation. Consideration shall be given to both the economy and efficiency of the reclamation work and to the results obtained or expected as a result of reclamation.
- (6) The availability of additional coal or other mineral or material resources within the project area which
 - (i) Results in a reasonable probability that the desired reclamation will be accomplished during the process of future mining; or

- (ii) Requires special consideration to assure that the resource is not lost as a result of reclamation and that the benefits of reclamation are not negated by subsequent, essential resource recovery operations.
 - (7) The acceptability of post-reclamation land uses in terms of compatibility with land uses in the surrounding area, consistency with applicable State, regional, and local land use plans and laws, and the needs and desires of the community in which the project is located.
 - (8) The probability of post-reclamation management, maintenance and control of the area consistent with the reclamation completed.
- (b) The Director shall incorporate the evaluation factors stated in Paragraph (a) into the procedures and processes for selecting projects in a manner which he deems appropriate. Additional factors may be developed to meet specific or unique needs. Specific values may be assigned to the factors stated in Paragraph (a). All evaluation factors are subject to the plan approval process in 30 CFR Part 884.

PART 877 -- RIGHTS OF ENTRY

SECTION

877.1	Scope
877.11	Consent to Entry
877.12	Entry for Studies or Exploration
877.13	Entry and Consent to Reclaim
877.14	Entry for Emergency Reclamation

SECTION 877.1 SCOPE

5-29-80

This Part establishes procedures for entry to lands or property by the Director or his authorized representative under the State Reclamation Plan, for the purposes of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and for the purpose of performing reclamation work.

SECTION 877.11 CONSENT TO ENTRY

5-29-80

The Director or his authorized representative shall take all reasonable actions to obtain written consent from the owner of record of the land or property to be entered in advance of such entry. The consent shall be in the form of a signed statement by the owner of record or his authorized agent which, at a minimum, includes a legal description of the land to be entered, the projected nature of work to be performed on the lands and any special conditions for entry. The statement shall not include any commitment by the Division to perform reclamation work nor to compensate the owner for entry.

SECTION 877.12 ENTRY FOR STUDIES OR EXPLORATION

5-29-80

- (a) The Director or his authorized agents, employees, or contractors, shall have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and the feasibility of restoration, reclamation, abatement, control, or prevention of such adverse effects.

- (b) If the owner of the land to be entered under this Section will not provide consent to entry, the Director shall give notice in writing to the owner of his intent to enter for purposes of study and exploration to determine the existence of adverse effects of past coal mining practices which may be harmful to the public health, safety, or general welfare. The notice shall be by mail, return receipt requested, to the owner, if known, and shall include a statement of the reasons why entry is believed necessary.

If the owner is not known, or the current mailing address of the owner is not known, or the owner is not readily available, the notice shall be posted in one or more places on the property to be entered where it is readily visible to the public and advertised once in a newspaper of general circulation in the locality in which the land is located. Notice shall be given at least 30 days before entry.

- (c) Entry required to investigate and explore reported emergency conditions will be governed by the provisions of Section 877.14(c).

SECTION 877.13

ENTRY AND CONSENT TO RECLAIM

5-29-80

- (a) The Director or his authorized agents, employees, or contractors, may enter upon land to perform reclamation activities if the consent of the owner cannot be obtained.
- (b) Prior to entry under this Section, the Director shall find in writing with supporting reasons that
 - (1) Land or water resources have been adversely affected by past coal mining practices;
 - (2) The adverse effects are at a state where, in the interest of the public health, safety, or the general welfare, action to restore, reclaim, abate, control, or prevent should be taken; and
 - (3) The owner of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices is not known or readily available; or
 - (4) The owner will not give permission for the Director or his authorized agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.
- (c) The Director shall give notice of his intent to enter for purposes of conducting reclamation at least 30 days before entry upon the property. The notice shall be in writing and shall be mailed, return receipt requested, to the owner, if known, with a copy of the findings required

by this Section. If the owner is not known, or if the current mailing address of the owner is not known, notice shall be posted in one or more places on the property to be entered where it is readily visible to the public and advertised once in a newspaper of general circulation in the locality in which the land is located. The notice posted on the property and advertised in the newspaper shall include a statement of where the findings required by this Section may be inspected or obtained.

SECTION 877.14

ENTRY FOR EMERGENCY RECLAMATION

5-29-80

- (a) The Director, his agents, employees, or contractors shall have the right to enter upon any land where an emergency exists and on any other land to have access to the land where the emergency exists to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices and to do all things necessary or expedient to protect the public health, safety, or general welfare.
- (b) Prior to entry under this Section, the Director shall make a written finding with supporting reasons that
 - (1) An emergency exists constituting a danger to the public health, safety, or general welfare;
 - (2) Emergency restoration, reclamation, abatement, control, or prevention of adverse effects of past coal mining is necessary and;
 - (3) No other person or agency will act expeditiously to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.
- (c) Notice to the owner shall not be required of entry for emergency reclamation. The Director shall make reasonable efforts to notify such owner and obtain consent prior to entry consistent with the emergency conditions that exist. Written notice shall be given to the owner as soon after entry as practical. The notice shall be mailed, return receipt requested, to the owner, if known, and shall include a copy of the findings required by this Section. If the owner is not known, or if the current mailing address of the owner is not known, notice shall be posted on the property entered in one or more places where it is readily visible to the public and advertised once in a newspaper of general circulation in the locality in which the land is located. The notice posted on the property and advertised in the newspaper shall include a statement that an emergency existed and where the findings required by this Section may be inspected or obtained.
- (d) The moneys expended for such work, and the benefits accruing to any such premises so entered, shall be chargeable against such land and shall mitigate or offset any claim in, or any action brought by any owner of any interest in such premises for any alleged damages

as a result of the entry.

PART 879 -- ACQUISITION, MANAGEMENT AND DISPOSITION OF LANDS AND WATER

SECTION

879.1	Scope
879.11	Land Eligible for Acquisition
879.12	Procedures for Acquisition
879.13	Acceptance of Gifts of Land
879.14	Management of Acquired Lands
879.15	Disposition of Reclaimed Lands

SECTION 879.1 SCOPE

5-29-80

This Part establishes procedures for acquisition, management, and disposition of eligible land and water for reclamation purposes by the Division under the State Reclamation Plan. It also establishes requirements for the collection of charges for the use of acquired land and disposition of the proceeds from the use or sale of acquired land.

SECTION 879.11 LAND ELIGIBLE FOR ACQUISITION

5-29-80

- (a) Land adversely affected by past coal mining practices may be acquired by the Division with moneys from the State Fund; provided that, prior to the acquisition of such land, the Director shall find in writing that the acquisition is necessary for successful reclamation and that
 - (1) The acquired land will serve recreation, historic, conservation and reclamation purposes or provide open space benefits after restoration, reclamation abatement, control or prevention of the adverse effects of past coal mining practices; and
 - (2) Permanent facilities such as a mine drainage treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

- (b) Coal refuse disposal sites and all coal thereon may be acquired by the Division with moneys from the State Fund; provided that, prior to the acquisition of such sites, the Director shall find in writing that the acquisition of such land is necessary for successful reclamation and will serve the purposes of the State Reclamation Program or that public ownership is desirable to meet an emergency situation and prevent recurrence of adverse effects of past coal mining practices.
- (c)
 - (1) Land adversely affected by past mining practices may be acquired by the Division if the Director finds in writing that acquisition with moneys for the State Fund is an integral and necessary element of an economically feasible plan for a project to construct or rehabilitate housing for
 - (i) Persons disabled as a result of employment in the mines or work incidental thereto;
 - (ii) Persons displaced by acquisition of land under these rules;
 - (iii) Persons dislocated as a result of adverse effects of coal mining practices which constitute an emergency for which the Director has made the determination required by Section 877.14;
 - (iv) Persons dislocated as the result of natural disasters or catastrophic failures from any cause.
 - (2) The Division may acquire such land in the name of the State directly or through any Division, agency, or instrumentality of the State, or any public body or nonprofit organization designated by the State.
- (d) Land or interests in land needed to fill voids, seal abandoned tunnels, shafts, and entry ways or reclaim surface impacts of underground or surface mines may be acquired by the Division if the Director finds that acquisition is necessary under Section 874.12(b).
- (e) When the Division acquires land under this part, it shall acquire only such interests in the land as are necessary for the reclamation work planned or the post-reclamation use of the land. Interests in improvements on the land, mineral rights, or associated water rights may be acquired if
 - (1) The customary practices and laws of the State will not allow severance of such interests from the surface estate; or
 - (2) Such interests are necessary to the reclamation work planned or the post-reclamation use of the land; and

- (3) Adequate written assurances cannot be obtained from the owner of the severed interest that future use of the severed interest will not be in conflict with the reclamation to be accomplished.

SECTION 879.12

PROCEDURES FOR ACQUISITION

5-29-80

- (a) An appraisal of the fair market value of all land or interest in land to be acquired shall be obtained from a professional appraiser by the Division. The appraisal shall state the fair market value of the land as adversely affected by past mining and shall otherwise conform to the requirements of the handbook on "Uniform Appraisal Standards for Federal Land Acquisitions" (Inter-agency Land Acquisition Conference 1973).
- (b) When practical, acquisition shall be by purchase from a willing seller. The amount paid for interests acquired shall reflect the fair market value of the interests as adversely affected by past mining.
- (c) When necessary, land or interests in land may be acquired by condemnation. Condemnation procedures shall not be started until all reasonable efforts have been made to purchase the land or interests in lands from a willing seller.
- (d) When the Division acquires land under this part, it shall comply, at a minimum and to the extent applicable, with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601, et seq.; 41 CFR Part 114-50; Solicitor of the Interior's regulations for Approval of Title to Lands and Condemnation, I SRM 6.1 et seq.; and regulations of the Attorney General under Order No. 440-70 dated October 2, 1970, establishing standards for title approval of lands to be acquired for Federal public purposes.
- (e) Title to all interests in land acquired by the Division shall be in the name of the State and shall be recorded in accordance with applicable State law and rule.

SECTION 879.13

ACCEPTANCE OF GIFTS OF LAND

5-29-80

- (a) The Director, under an approved State Reclamation Plan, and pursuant to Section 11 of the Act, may accept donations of title to land or interest in land that is necessary for reclamation activities. A donation shall not be accepted if the terms or conditions of acceptance are inconsistent with the objectives or requirements of the program.
- (b) Offers to make a gift of such land or interest in land shall be in writing and shall include
 - (1) A statement of the interest which is being offered.

- (2) A legal description of the land and a description of any improvements on it.
 - (3) A description of any limitations on the title or conditions as to the use or disposition of the land existing or to be imposed by the donor.
 - (4) A statement that
 - (i) The offerer is the record owner of the interest being offered.
 - (ii) The interest offered is free and clear of all encumbrances except as clearly stated in the offer.
 - (iii) There are no adverse claims against the interest offered.
 - (iv) There are no unredeemed tax deeds outstanding against the interest offered.
 - (v) There is no continuing responsibility by the operator under State or Federal statutory law for reclamation.
 - (5) An itemization of any unpaid taxes or assessments levied, assessed or due which could operate as a lien on the interest offered.
- (c) If the offer is accepted, a deed of conveyance shall be executed, acknowledged, and recorded. The deed shall state that it is made "as a gift under Section 11 of the "Surface Coal Mining and Reclamation Act of Title to donated land shall be in the name of the State.

SECTION 879.14

MANAGEMENT OF ACQUIRED LANDS

5-29-80

- (a) Land acquired under this Part may be used pending disposition under Section 879.15 for any lawful purpose that is not inconsistent with the reclamation activities and post-reclamation uses for which it was acquired.
- (b) Any user of land acquired under this Part shall be charged a use fee. The fee shall be determined on the basis of the fair market value of the benefits granted to the user, charges for comparable uses within the surrounding area, or the costs to the Division for providing the benefit, whichever is appropriate. The Director may waive the fee if found in writing that such a waiver is in the public interest.

- (c) All use fees collected shall be deposited in the State Fund in accordance with Part 872, unless previously appropriated or otherwise by the State legislature for the specific purpose of operating and maintaining improvement of the land.

SECTION 879.15 DISPOSITION OF RECLAIMED LANDS

5-29-80

- (a) Prior to the disposition of any land acquired under this Part, the Director shall
 - (1) Publish a notice which describes the proposed disposition of the land in a newspaper of general circulation within the area where the land is located for a minimum of 4 successive weeks. The notice shall provide at least 30 days for public comment and state where copies of plans for disposition of the land may be obtained or reviewed and the address to which comments on the plans should be submitted. The notice shall also state that a public hearing will be held if requested by any person.
 - (2) Hold a public hearing if requested as a result of the public notice. The Director may determine that a hearing is appropriate even if a request is not received. It shall be scheduled at a time and place that affords local citizens and governments the maximum opportunity to participate. The time and place of the hearing shall be announced in a newspaper of general circulation in the area in which the land is located at least 30 days before the hearing. All comments received at the hearing shall be recorded.
 - (3) Make a written finding that the proposed disposition is appropriate considering all comments received and consistent with any local, State, or Federal laws or rules which apply.
- (b) The Division may transfer, with approval of the OSM Regional Director, the administrative responsibility for land acquired under this Part to any agency or political subdivision of the State with or without cost to that agency. The agreement, including amendments, under which a transfer is made shall specify
 - (1) The purposes for which the land may be used consistent with the authorization under which the land was acquired; and
 - (2) That the administrative responsibility for the land will revert to the Division if at any time in the future, the land is not used for the purposes specified.
- (c) The Division may, with approval by the OSM Regional Director, transfer title to abandoned and unreclaimed land to the United States to be reclaimed and administered by OSM. When the Division transfers land to OSM under this Paragraph, the State shall

have a preference right to purchase such land from OSM after reclamation is completed. The price to be paid by the State shall be the fair market value of the land in its reclaimed condition less any portion of the land acquisition price paid by the State.

- (d) The Division may sell any land acquired and reclaimed under this Part except that acquired under 879.11(c) to the local government within whose orders the land is located.
 - (1) Before reclaimed land is sold to a local government, the purchaser shall state in writing the public purposes for which the land is to be used. The public purpose shall be considered valid if it is authorized as a public function by appropriate State law or ordinance and is consistent with the conditions under which the land was acquired.
 - (2) The price to be paid by the local government shall be the fair market value of the land in its reclaimed condition. The land may be sold at a lower price negotiated by the Director, but the price shall not be less than the cost to the Division for acquiring and reclaiming the land.
 - (3) The sales agreement for land sold under this Paragraph shall state valid public purposes for which the land may be used. If, at any time in the future, the land is not used for the purpose stated, all right and title to or interest in such land shall revert to the State.
- (e) The Director may transfer or sell land acquired under 879.11(c), with or without monetary consideration, to any political subdivision of the State or to any person, firm, association, or corporation.
 - (1) The transfer or sale shall not be made unless the Director finds in writing that the transfer or sale is an integral and necessary element of an economically feasible plan for the project for which the land was acquired.
 - (2) The price at which land is sold under Paragraph (e) of this Section shall be negotiated between the Director and the purchaser. The price may be below fair market value if economically necessary for the success of the project.
 - (3) If the price at which the land is sold is below the fair market value of the land, or if the land is transferred at no cost to the recipient, the recipient shall agree in advance that no portion of the difference between the amount paid and the fair market value will accrue as profit, or as an offset to other business losses, to any private person, firm, association, or corporation.
 - (4) The transfer or sales agreement for land disposed of under Paragraph (e) of this Section shall state the purposes for which the land was acquired and will be used. If at any time in the future the land is not used for the purposes stated, all right,

title and interest in such land shall revert to the State.

- (f) The Director, with the approval of the OSM Regional Director may sell land acquired under this Part by public sale if such land is suitable for industrial, commercial, residential, or recreational development and if such development is consistent with local, State, or Federal land use plans for the area in which the land is located.
 - (1) Land shall be sold by public sale only if it is found that retention by the State or disposal under other Paragraphs of this Section, is not in the public interest.
 - (2) Land shall be sold for not less than fair market value under a system of competitive bidding which includes at a minimum
 - (i) Publication of a notice once a week for 4 weeks in a newspaper of general circulation in the locality in which the land is located. The notice shall describe the land to be sold, state the appraised value, state any restrictive covenants which will be a condition of the sale, and state the time and place of the sale.
 - (ii) Provisions for sealed bids to be submitted prior to the sale date followed by an oral auction open to the public.
 - (3) All moneys received from disposal of land under this Part shall be deposited in the State Fund in accordance with Part 872.

PART 882 -- RECLAMATION ON PRIVATE LAND

SECTION

882.1	Scope
882.11	Operations on Private Land
882.12	Appraisals
882.13	Liens
882.14	Satisfaction of Liens

SECTION 882.1 SCOPE

5-29-80

This Part authorizes reclamation on private land and establishes procedures for recovery of the cost of reclamation activities conducted on privately owned land by the Division.

SECTION 882.11 OPERATIONS ON PRIVATE LAND

5-29-80

Reclamation activities may be carried out on private land if a consent to enter is obtained under Sec. 877.11, or if entry is required and made under Sections 877.13 or 877.14.

SECTION 882.12 APPRAISALS

5-29-80

- (a) A notarized appraisal of the fair market value of private land to be reclaimed shall be obtained by the Division from an independent professional appraiser. Such appraisal shall meet the quality of appraisal practices found in the handbook on "Uniform Appraisal Standards for Federal Land Acquisitions" (Inter-Agency Land Acquisition Conference 1973). The appraisal shall be obtained before any reclamation activities are started, unless the work must start without delay to abate an emergency. If work must start because of an emergency, the appraisal shall be completed at the earliest practical time and before related nonemergency work is commenced. The appraisal shall state the fair market value of the land as adversely affected by past mining.
- (b) An appraisal of the fair market value of all land reclaimed shall be obtained after all reclamation activities have been completed. The appraisal shall be obtained in accordance with Paragraph (a) of this Section and shall state the market value of the land as reclaimed.

- (c) The landowner is to be provided with a statement of the increase in market value, an itemized statement of reclamation expenses and notice that a lien will or will not be filed in accordance with Sec. 882.13.
- (d) Appraisals for privately owned land which fall under Section 882.13(a)(1), (2), and (3) may be obtained from either an independent or staff professional appraiser.

SECTION 882.13

LIENS

5-29-80

- (a) When the Division performs reclamation work, it shall place a lien against land reclaimed if the reclamation resulting an increase in the fair market value based on the appraisals obtained under Section 882.12.
 - (1) A lien shall not be placed against the property of a surface owner who acquired title prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operation which necessitated the reclamation work.
 - (2) The Director may waive the lien if the cost of filing it, including indirect costs to the State, exceeds the increase in fair market value as a result of reclamation activities.
 - (3) The lien may be waived by the Director if the reclamation work performed on private land primarily benefits health, safety or environmental values of the greater community or area in which the land is located, or if reclamation is necessitated by an unforeseen occurrence and the work performed to restore that land will not result in a significant increase in the market value of the land as it existed immediately before the occurrence.
- (b) If a lien is to be filed, the Division shall within 6 months after completion of the reclamation work, file a statement in the office having responsibility under applicable law for recording judgments against land and for the lands to be liened. Such statement shall consist of an account of moneys expended for the reclamation work, together with notarized copies of the appraisals obtained under Sec. 882.12. The amount reported to be the increase in value of the property shall constitute the amount of the lien and shall have priority as a lien second only to the lien of real estate taxes imposed upon the land.
- (c) Within 60 days after the lien is filed the landowner may petition under local law to determine the increase in market value of the land as a result of reclamation work. Any aggrieved party may appeal in the manner provided by local law.

- (a) A lien placed on private property shall be satisfied, to the extent of the value of the consideration received, at the time of transfer of ownership. Any unsatisfied portion shall remain as a lien on the property and shall be satisfied in accordance with this Paragraph.
- (b) When the Division files a lien on private property, the Division shall maintain or renew it from time to time as may be required under State or local law.
- (c) Moneys derived from the satisfaction of lien established under this Part shall be deposited in the State Fund.

PART 900 -- PROCEDURES FOR HEARING AND APPEALS

SECTION

900.1	Parties
900.2	Filing of Documents
900.3	Form of Documents
900.4	Service
900.5	Intervention
900.6	Voluntary Dismissal
900.7	Motions
900.8	Consolidation of Procedures
900.9	Advancement of Proceedings
900.10	Request for Hearing: Waiver
900.11	Status of Decisions: Order and Notices Pending Review

SECTION 900.1 PARTIES

5-29-80

The following persons shall be made a party to any proceeding initiated pursuant to these rules:

- (a) The Division;
- (b) The permittee or permit applicant or person alleged to be operating without a permit;
- (c) If the Commission is requested to enter an order affecting the interest of any named person, such person;
- (d) If the proceeding follows a notice and comment proceeding on the same matter, any person who has participated by submitting comments during the prior notice and comment proceeding.

SECTION 900.2 FILING OF DOCUMENTS

5-27-99

- (a) All pleadings in a proceeding to be conducted or being conducted by a Presiding Officer under these rules shall be filed, by hand or by mail, with the Secretary, Arkansas Pollution Control and Ecology Commission, 101 East Capitol Suite 205, Little Rock, Arkansas 72201.

- (b) Where a proceeding has been assigned to a Presiding Officer, the parties will be notified by the Presiding Officer of his name and address, and thereafter copies of all further documents shall be mailed to the Presiding Officer at the address designated in the notice.
- (c) Any person who has initiated a proceeding under these rules shall file proof of service in the form of a return receipt where service is by registered or certified mail, or an acknowledgment by the party served or a verified return where service is made personally. A certificate of service shall accompany all other documents filed by a party in any proceeding.
- (d) The effective filing date for documents initiating proceedings shall be the date the document is received by the Commission Secretary.
- (e) The effective filing date for all other documents, shall be the date the document is received by the Commission Secretary.

SECTION 900.3 FORM OF DOCUMENTS

5-29-80

- (a) Any document filed in any proceeding brought under the Act shall be captioned with
 - (1) The names of the parties;
 - (2) The name of the facility to which the document relates; and
 - (3) Identification by number of any notice or order sought to be reviewed.
- (b) After a docket number has been assigned to the proceeding the caption shall contain such docket number.
- (c) Each document shall contain a title that identifies the contents of the document following the caption.
- (d) The original of any document filed shall be signed by the person submitting the document or by that person's attorney.
- (e) The address and telephone number of the person filing the document or that person's attorney shall appear beneath the signature.

SECTION 900.4

SERVICE

5-29-80

- (a) Any party initiating a proceeding shall serve copies of the initiating documents on all parties and all other persons participating in the proceeding.
- (b) Copies of documents by which any proceeding is initiated shall be served on all parties identified in Section 900.1 personally or by registered or certified mail, return receipt requested. All subsequent documents shall be served personally or by first class mail.
- (c) Service of copies of documents initiating a proceeding is complete at the time of personal service or, if service is made by mail, upon receipt. Service of all subsequent documents is complete at the time of personal service or, if service is by mail, upon mailing.
- (d) Whenever an attorney has entered an appearance for a party in a proceeding before a Presiding Officer, service thereafter shall be made upon the attorney.

SECTION 900.5

INTERVENTION

5-29-80

- (a) Any person may petition for leave to intervene at any stage of a proceeding provided that if the intervention is not filed in a timely manner, the Presiding Officer may condition the order granting intervention as appropriate to prevent delays in the proceedings.
- (b) A petitioner for leave to intervene shall incorporate in the petition a statement setting forth the interest of the petitioner and, where required, a showing of why his interest is or may be adversely affected.
- (c) The Presiding Officer shall grant intervention where the petitioner
 - (1) Had a statutory right to initiate the proceeding in which he wishes to intervene; or
 - (2) Has an interest which is or may be adversely affected by the outcome of the proceeding.
- (d) If neither paragraph (c)(1) nor (c)(2) of this section apply, the Presiding Officer may grant intervention, and shall consider the following in determining whether intervention is appropriate
 - (1) The nature of the issues;
 - (2) The adequacy of representation of petitioner's interest which is provided by the

existing parties to the proceedings;

- (3) The ability of the petitioner to present relevant evidence and argument;
- (4) The effect of intervention on the Division's implementation of its statutory mandate; and
- (5) The stage of the proceedings at the time the intervention is filed, and the effect granting intervention at that stage may have on bringing the proceedings to an orderly conclusion.

SECTION 900.6 VOLUNTARY DISMISSAL

5-29-80

Any party who initiated a proceeding may seek to withdraw by moving to dismiss at any stage of a proceeding and the Presiding Officer may grant such a motion.

SECTION 900.7 MOTIONS

5-29-80

- (a) Except for oral motions made in proceedings on the record, or where the Presiding Officer otherwise directs, each motion shall
 - (1) Be in writing; and
 - (2) Contain a concise statement of supporting grounds.
- (b) Unless the Presiding Officer orders otherwise, any party to a proceeding in which a motion is filed under paragraph (a) of this section shall have 15 days from service of the motion to file a statement in response.
- (c) Failure to make a timely motion or to file a statement in response may be construed as a waiver of objection.
- (d) The Presiding Officer shall rule on all motions as expeditiously as possible.

SECTION 900.8 CONSOLIDATION OF PROCEEDINGS

5-29-80

When proceedings involving a common question of law or fact are pending before a Presiding Officer, such proceedings are subject to consolidation pursuant to a motion by a party or at the

initiative of the Presiding Officer.

SECTION 900.9

ADVANCEMENT OF PROCEEDINGS

5-29-80

- (a) Except in expedited review proceedings under Part 940, or in temporary relief proceedings under Part 950, at any time after commencement of a proceeding, any party may move to advance the scheduling of a proceeding.
- (b) Except as otherwise directed by the Presiding Officer, any party filing a motion under this section shall
 - (1) Make the motion in writing;
 - (2) Describe the exigent circumstances justifying advancement;
 - (3) Describe the irreparable harm that would result if the motion is not granted; and
 - (4) Incorporate in the motion affidavits to support any representations of fact.
- (c) Service of a motion under this section shall be accomplished by personal delivery or by telephonic or telegraphic communication followed by mail. Service is complete upon mailing.
- (d) Unless otherwise directed by the Presiding Officer, all parties to the proceeding in which the motion is filed shall have 10 days from the date of service of the motion to file a statement in response to the motion.
- (e) Following the timely receipt by the Presiding Officer of statements in response to the motion, the Presiding Officer may schedule a hearing regarding the motion. If the motion is granted, the Presiding Officer may advance pleading schedules, prehearing conferences, and the hearing, as deemed appropriate: Provided, a hearing on the merits shall not be scheduled with less than a five (5) working day notice to the parties, unless all parties consent to an earlier hearing.

SECTION 900.10

REQUEST FOR HEARING: WAIVER

5-29-80

Any person initiating a proceeding who is entitled to a hearing under the Act must request such hearing in writing within ten (10) days of the date such person first notifies the Division, in writing, of his objection to the decision, notice or order. Where parties are directed by any section in these rules to file a responsive pleading on or before a specified time, such party must request a hearing, in writing, on or before the same specified time, and any party who fails to file such responsive pleading by the time specified, may be deemed to have waived his right to a hearing.

SECTION 900.11

STATUS OF DECISIONS: ORDER AND NOTICES PENDING
REVIEW

5-29-80

Except where temporary relief is granted pursuant to Part 950, administrative notices and administrative orders or decisions issued under the Act shall remain in effect during the pendency of review before the Commission.

PART 920 -- ADJUDICATORY HEARINGS

SECTION

920.1	Presiding Officers
920.2	Powers of Presiding Officers
920.3	Notice of Hearing
920.4	Certification of Interlocutory Ruling
920.5	Summary Decision
920.6	Proposed Findings of Facts and Conclusions of Law
920.7	Initial Orders and Decisions
920.8	Effect of Initial Order or Decision

SECTION 920.1 PRESIDING OFFICERS

5-29-80

A Presiding Officer or officers shall preside over any hearing conducted under these rules.

SECTION 920.2 POWERS OF PRESIDING OFFICERS

5-29-80

- (a) Under the rules of this part, the Presiding Officer may
- (1) Administer oaths and affirmations;
 - (2) Issue subpoenas;
 - (3) Issue appropriate orders relating to discovery;
 - (4) Rule on procedural requests or similar matters;
 - (5) Hold conferences for settlement or simplification of the issues;
 - (6) Regulate the course of the hearing;
 - (7) Rule on offers of proof and receive relevant evidence;
 - (8) Take other actions authorized by the Act;
 - (9) Make or recommend decisions.

- (b) A Presiding Officer may order a prehearing conference
 - (1) To simplify and clarify issues;
 - (2) To receive stipulations and admissions;
 - (3) To explore the possibility of agreement disposing of any or all of the issues in dispute; and
 - (4) For such other purposes as may be appropriate.
- (c) Except as otherwise provided in these rules, the jurisdiction of the Presiding Officer shall terminate upon
 - (1) The filing of a notice of appeal from an initial decision or other order dispositive of the proceeding;
 - (2) The expiration of the time period within which an appeal may be filed.

SECTION 920.3 NOTICE OF HEARING

5-29-80

- (a) A Presiding Officer shall give notice to the parties of the time, place and nature of any hearing.
- (b) Except for expedited review proceedings under Part 940 and temporary relief proceedings under Part 950 where time is of the essence, notice given under this section shall be in writing.
- (c) In an expedited review proceeding under Part 940 when there is only opportunity to give oral notice, the Presiding Officer shall enter that fact contemporaneously on the record by a signed and dated memorandum describing the notice given.

SECTION 920.4 CERTIFICATION OF INTERLOCUTORY RULING

5-29-80

Upon motion or upon the initiative of the Presiding Officer, the Presiding Officer may certify to the Circuit Court a ruling which does not finally dispose of the case if the ruling presents a controlling question of law and an immediate appeal would materially advance ultimate disposition by the Presiding Officer.

SECTION 920.5

SUMMARY DECISION

5-29-80

At any time after a proceeding has begun, a party may move for summary decision of the whole or part of a case in accordance with Rule 45, Arkansas Rules of Civil Procedure.

SECTION 920.6

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF
LAW

5-29-80

The Presiding Officer shall offer the parties to a proceeding the opportunity to submit proposed findings of fact and conclusions of law together with a supporting brief at a time designated by the Presiding Officer.

SECTION 920.7

INITIAL ORDERS AND DECISIONS

5-29-80

An initial order or decision disposing of a case shall incorporate

- (a) Findings of fact and conclusions of law and the basis and reasons therefore on all the material issues of fact, law, and discretion presented on the record; and
- (b) An order granting or denying relief.

SECTION 920.8

EFFECT OF INITIAL ORDER OR DECISION

5-29-80

An initial order or decision shall become final if that order or decision is not timely appealed to a Court of competent jurisdiction.

PART 930 -- DISCOVERY

SECTION

930.1 Discovery

SECTION 930.1 DISCOVERY

5-29-80

Parties may obtain discovery in accordance with Rules 26-34 and Rule 36 of the Arkansas Rules of Civil Procedure, and the Presiding Officer may take such actions as are authorized by the "Court" in such rules.

PART 940 -- TEMPORARY AND EXPEDITED REVIEW

SECTION

- 940.1 Temporary Relief
- 940.2 Expedited Review for Extraordinary Orders
- 940.3 Procedures for Expedited Review

SECTION 940.1 TEMPORARY RELIEF

5-29-80

- (a)
 - (1) An application for temporary relief may be filed by any party to a proceeding at any time prior to decision by a Presiding Officer.
 - (2) Temporary relief may be granted upon such conditions as the Presiding Officer may prescribe if a public hearing has been held in the locality of the permit area in which all parties were given the opportunity to be heard, and if the applicant shows:
 - (i) There is a substantial likelihood that the findings of the Commission will be favorable to him; and
 - (ii) The relief requested will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources.
- (b) The application shall include
 - (1) A detailed written statement setting forth the reasons why relief should be granted;
 - (2) A showing that there is a substantial likelihood that the findings and decision of the Presiding Officer in the matters to which the application relates will be favorable to the applicant;
 - (3) A statement of the relationship of the relief requested to the health or safety of the public or to environmental harm to land, air or water resources, and a showing that the relief sought will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources.
 - (4) A statement of the public relief requested.
- (c) All parties to the proceeding to which the application relates shall have 5 days from the date

of receipt of the application to file a written response.

SECTION 940.2

EXPEDITED REVIEW FOR EXTRAORDINARY ORDERS

5-29-80

- (a) An Extraordinary Order is any notice, order or decision issued by the Division which has the effect of immediately cessating operations on all or any part of an existing and currently operating surface coal mining and reclamation operation. Any person who has received an extraordinary order may file a request for expedited review of the order and obtain a decision within thirty (30) days, or a request for expedited temporary relief from the order and obtain a decision with five (5) days.
- (b) Any person filing an application for expedited review shall incorporate in that application regarding each claim for relief
 - (1) A statement of facts entitling that person to administrative relief;
 - (2) A request for specific relief;
 - (3) A specific statement which delineates each issue to be addressed by the applicant during the expedited proceedings;
 - (4) A copy of the order sought to be reviewed;
 - (5) A list identifying each of applicant's witnesses by name, address, and place of employment, including expert witnesses and the area of expertise to which they will address themselves at the hearings, and a summary of their testimony;
 - (6) Copies of all exhibits and other documentary evidence that the applicant intends to introduce as evidence at the hearing and descriptions of all physical exhibits and evidence which is not capable of being copied or attached; and
 - (7) Any other relevant information.
- (c) If any applicant fails to comply with all the requirements of Section (b), the Presiding Officer may find that the applicant has waived the expedited decision requirement or the Presiding Officer shall order that the application be perfected and the application shall not be considered filed for purposes of the expedited decision until perfected. Failure to timely comply with the Presiding Officer's order may constitute a waiver of the expedited decision requirement.
- (d) The decision in an expedited review proceeding shall be issued

- (1) Within 30 days of the date of filing of the petition for all petitions requesting other than temporary relief.
- (2) Within five (5) days of the date of filing of the petition if the request is for temporary relief.

SECTION 940.3

PROCEDURE FOR EXPEDITED REVIEW

5-29-80

- (a) The following special rules shall apply for expedited review proceedings other than expedited temporary relief
 - (1) The applicant shall serve all known parties with a copy of the application simultaneously with the filing of the application. If service is accomplished by mail, the applicant shall inform all known parties by telephone at the time of mailing that an application is being filed and shall inform the Commission Secretary, or if a Presiding Officer has been assigned, the Presiding Officer by telephone that such notice has been given. However, no ex parte communication as to the merits of the proceeding may be conducted with the Presiding Officer.
 - (2) Any party desiring to file a response to the application for review shall file a written response within five (5) working days of service of the application.
 - (3) If the applicant has requested a hearing, the Presiding Officer shall act immediately upon receipt of the application to notify the parties of the time and place of the hearing. Notice shall be given to all parties at least five (5) working days prior to the hearing date.
 - (4) The Presiding Officer may require the parties to submit proposed findings of fact and conclusions of law at the hearing which may be orally supplemented on the record at the hearing or, where proposed findings of fact and conclusions of law have not been submitted at the hearing, they may be orally presented for the record at the hearing.
 - (5) The Presiding Officer shall make an initial decision. He shall either rule from the bench on the application, orally stating the reasons for his decision or he shall issue a written decision. If the Presiding Officer makes an oral ruling, his approval of the record of the hearing shall constitute his written decision.
 - (6) If any party desires to appeal, such party shall
 - (i) If the Presiding Officer makes an oral ruling, make an oral statement, within a time period as directed by the Presiding Officer, that the decision

is being appealed and request that the Presiding Officer certify the record to the reviewing Court; or

- (ii) If the Presiding Officer issues a written decision after the close of the hearing, file a notice of appeal with the Presiding Officer and with the reviewing Court within two (2) working days of receipt of the Presiding Officer's decision.
 - (7) If the decision of the Presiding Officer is appealed, the reviewing Court shall act expeditiously to review the record and issue its decision.
 - (8) If at any time after the initiation of this expedited procedure, the applicant requests a delay or acts in a manner so as to frustrate the expeditious nature of this proceeding or fails to comply with any requirement of Section 940.2(b), such action shall constitute a waiver of the expedited decision requirement.
 - (9) If the applicant seeks to offer witnesses, exhibits, or testimony at the hearing in addition to those identified, submitted, described, or summarized in the application for expedited review perfected in accordance with the requirements of Section 940.2(b), upon objection by an opposing party to such offer, the Presiding Officer may allow such objecting party additional time in order to prepare for cross-examination of unidentified witnesses or to identify and prepare rebuttal evidence or otherwise undue any additional prejudice which may result to such party. The Presiding Officer may rule that the running of the time for decision is stayed for the period of any additional time allowed pursuant to this subsection or may determine that the applicant has waived his right to an expedited decision.
- (b) In expedited temporary relief proceedings, the Presiding Officer shall follow the procedures stated in Paragraphs (a)(1)-(9) of this Section, but the Presiding Officer shall set appropriate deadlines for filing pleadings, giving notices and the like and notify all parties of those deadlines.
 - (c) Any party desiring to file a response to the application for review shall file a written response within five (5) working days of service of the application.
 - (d) If the applicant has requested a hearing, the Presiding Officer shall act immediately upon receipt of the application to notify the parties of the time and place of the hearing. In proceedings for other than expedited temporary relief, notice shall be given to all parties at least five (5) working days prior to the hearing date.
 - (e) The Presiding Officer may require the parties to submit proposed findings of fact and conclusions of law at the hearing which may be orally supplemented on the record at the hearing or, where proposed findings of fact and conclusions of law have not been submitted at the hearing, they may be orally presented for the record at the hearing.

- (f) The Presiding Officer shall make an initial decision. He shall either rule from the bench on the application, orally stating the reasons for his decision or he shall issue a written decision. If the Presiding Officer makes an oral ruling, his approval of the record of the hearing shall constitute his written decision.
- (g) If any party desires to appeal, such party shall
 - (1) If the Presiding Officer makes an oral ruling, make an oral statement, within a time period as directed by the Presiding Officer, that the decision is being appealed and request that the Presiding Officer certify the record to the reviewing Court; or
 - (2) If the Presiding Officer issues a written decision after the close of the hearing, file a notice of appeal with the Presiding Officer and with the reviewing Court within two (2) working days of receipt of the Presiding Officer's decision.
- (h) If the decision of the Presiding Officer is appealed, the reviewing Court shall act expeditiously to review the record and issue its decision.
- (i) If at any time after the initiation of this expedited procedure, the applicant requests a delay or acts in a manner so as to frustrate the expeditious nature of this proceeding or fails to comply with any requirement of Section 940.2(b), such action shall constitute a waiver of the expedited decision requirement.
 - (1) If the applicant seeks to offer witnesses, exhibits, or testimony at the hearing in addition to those identified, submitted, described, or summarized in the application for expedited review perfected in accordance with the requirements of Section 940.2(b), upon objection by an opposing party to such offer, the Presiding Officer may allow such objecting party additional time in order to prepare for cross-examination of unidentified witnesses or to identify and prepare rebuttal evidence or otherwise undue any additional prejudice which may result to such party. The Presiding Officer may rule that the running of the time for decision is stayed for the period of any additional time allowed pursuant to this subsection or may determine that the applicant has waived his right to an expedited decision.

PART 960 -- APPEALS

SECTION

960.1	Appeals: Who May Appeal
960.2	Appeals: How Taken
960.3	Answer
960.4	Stay Pending Appeal
960.5	Certified Transcript
960.6	Record on Appeal
960.7	Extended Time for Appeals

SECTION 960.1 APPEALS: WHO MAY APPEAL

5-29-80

Any person who is or may be adversely affected by a written decision of the Commission may appeal to the Circuit Court of Pulaski County, or the Circuit Court of any county in which the involved surface coal mining operation is located.

SECTION 960.2 APPEALS: HOW TAKEN

5-27-99

- (a) A person appealing under this section shall file a written notice of appeal with the Commission Secretary.
- (b) The notice of appeal shall be filed within thirty (30) days from the date of receipt of the decision. Proof of service of the notice of appeal on all parties to the proceeding shall be filed with the Commission Secretary within 15 days after service.
- (c) The notice of appeal shall indicate that an appeal is intended, must identify the decision being appealed and the date of the decision.

SECTION 960.3 ANSWER

5-27-99

Any party served with a notice of appeal who wishes to participate in the proceedings on appeal shall file an answer with the Commission Secretary within 20 days after service of the notice of appeal.

SECTION 960.4

STAY PENDING APPEAL

5-29-80

The filing of a notice of appeal shall not automatically stay enforcement of the Commission's action, but the reviewing court may do so if

- (a) All parties to the proceedings have been notified and given an opportunity to be heard on a request for temporary relief;
- (b) The person requesting such relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding; and
- (c) Such relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air, or water resources.

SECTION 960.5

CERTIFIED TRANSCRIPT

5-27-99

- (a) Within ten (10) days after filing of the notice of appeal, the appellant shall pay to the Commission Secretary the cost of preparing a transcript of the proceedings. Failure to submit such costs may result in dismissal of the appeal.
- (b) Within thirty (30) days after the filing of the notice of appeal, or within such further time as the Court may allow, but not exceeding ninety (90) days in the aggregate, the Commission shall transmit to the reviewing Court the original or a certified copy of the entire record of the proceeding under review. A certified copy shall be filed with the Commission Secretary, and may be checked out by parties to the appeal.
- (c) By stipulation of all parties to the appeal, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the Court for the additional cost. The court may require or permit subsequent corrections or additions to the record.

SECTION 960.6

RECORD ON APPEAL

5-29-80

- (a) The review shall be conducted by the court without a jury and shall be confined to the record.

- (b) Any party to the appeal may request the court for leave to present additional evidence, and if the court finds that the evidence is material and that the evidence could not, with reasonable diligence, have been discovered and produced at the administrative hearing, the court may order that the additional evidence be taken before the Commission upon such conditions as may be just. The Commission may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.
- (c) The Court shall, upon request, hear oral argument and receive written briefs.

SECTION 960.7

EXTENDED TIME FOR APPEALS

5-29-80

Unless a longer period of time is granted by the Court, (or a shorter period in the case of an expedited review) briefs shall be submitted as follows

- (a) Appellant's brief shall be due within thirty (30) days of the date of filing of the transcript.
- (b) Appellee(s)' brief(s) shall be due within thirty (30) days after the date of filing of appellant's brief.
- (c) Appellant's reply brief shall be due within 15 days after the date of filing of Appellee(s)' brief(s).

PART 970 -- PETITIONS FOR AWARD OF COSTS AND EXPENSES

SECTION

970.1	Who May File
970.2	Where to File: Time for Filing
970.3	Contents of Petition
970.4	Answer
970.5	Who May Receive an Award
970.6	Awards
970.7	Appeals

SECTION 970.1 WHO MAY FILE

5-29-80

Any person may file a petition for award of costs and expenses including attorneys fees reasonably incurred as a result of that person's participation in any administrative proceedings under the Act which results in final order being issued by the Commission.

SECTION 970.2 WHERE TO FILE: TIME FOR FILING

5-29-80

The petition for an award of costs and expenses including attorneys' fees must be filed with the Presiding Officer who issued the final order, within forty-five (45) days of receipt of such order. Failure to make a timely filing of the petition may constitute a waiver of the right to such an award.

SECTION 970.3 CONTENTS OF PETITION

5-29-80

- (a) A petition filed under this section shall include the name of the person from whom costs and expenses are sought and the following shall be submitted in support of the petition
 - (1) An affidavit setting forth in detail all costs and expenses including attorneys' fees reasonably incurred for, or in connection with, the person's participation in the proceeding;
 - (2) Receipts or other evidence of such costs and expenses; and

- (3) Where attorney's fees are claimed, evidence concerning the house expended on the case, the customary commercial rate of payment for such services in the area, and the experience, reputation and ability of the individual or individuals performing the services.

SECTION 970.4

ANSWER

5-29-80

Any person served with a copy of the petition shall have thirty (30) days from service of the petition within which to file an answer to such petition.

SECTION 970.5

WHO MAY RECEIVE AN AWARD

5-29-80

Appropriate costs and expenses including attorneys' fees may be awarded

- (a) To any person from the permittee, if
 - (1) The person initiates any administrative proceedings reviewing enforcement actions initiated pursuant to the Arkansas Surface Coal Mining and Reclamation Code, upon a finding that a violation of the Act, rules or permit has occurred, or that an imminent hazard existed, or to any person who participates in an enforcement proceeding where such a finding is made if the Presiding Officer determines that the person made a substantial contribution to the full and fair determination of the issues; or
- (b) To any person other than a permittee or his representative from the Division if the person initiates or participates in any proceeding under the Act upon a finding that the person made a substantial contribution to a full and fair determination of the issues.
- (c) To a permittee from the Division when the permittee demonstrates that the Division, pursuant to the Act issued an order of cessation, a notice of violation, or an order to show cause why a permit should not be suspended or revoked, in bad faith and for the purpose of harassing or embarrassing the permittee; or
- (d) To a permittee from any person where the permittee demonstrates that pursuant to the Act the person initiated a proceeding under these rules or participated in such a proceeding in bad faith for the purpose of harassing or embarrassing the permittee.
- (e) To the Division where it demonstrates that any person pursuant to the Act applied for review or that any party participated in such a proceeding in bad faith and for the purpose of harassing or embarrassing the Division.

SECTION 970.6

AWARDS

5-29-80

An award under this Part 970 may include

- (a) All costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred as a result of initiation and/or participation in a proceeding under the Act; and
- (b) All costs and expenses, including attorneys fees and expert witness fees, reasonably incurred in seeking the award by the Commission.

SECTION 970.7

APPEALS

5-29-80

Any person aggrieved by a decision concerning the award of costs and expenses in an administrative proceeding under this Part 970 may appeal such award under procedures set forth in Part 960 et seq., unless the Court has made the initial decision concerning such an award.

ARKANSAS REGISTER

Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**

Secretary of State

John Thurston

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Name of Agency Arkansas Pollution Control & Ecology CommissionDepartment Department of Energy and EnvironmentContact Michael McAlister E-mail mcalister@adeq.state.ar.us Phone 501-682-0918Statutory Authority for Promulgating Rules Act 704 of the 93rd General Assembly**Rule Title:** Rule 20, " The Arkansas Surface Coal Mining and Reclamation Code"**Intended Effective Date**

(Check One)

Date

☐ Emergency (ACA 25-15-204) Legal Notice Published _____☐ 10 Days After Filing (ACA 25-15-204) Final Date for Public Comment _____☐ Other _____ Reviewed by Legislative Council _____
(Must be more than 10 days after filing date.)Adopted by State Agency 12/03/2021

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Peter AlbergPeter.Alberg@adeq.state.ar.us12/15/2021

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Signature

501-682-7890

moulton@adeq.state.ar.us

Phone Number

E-mail Address

Administrative Law Judge

Title

Date

2021 DEC 20 AM 10:27

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Agency Certification Form

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501-682-2550
aslib-govdocs@ade.arkansas.gov



For Office Use Only

Classification Number:

Name of Agency:

Division/Department/Office:

Arkansas Pollution Control & Ecology Commiss Department of Energy and Environment

Contact Person:

Telephone:

Michael McAlister

501-682-0918

Statutory Authority for Promulgating Rules:

Act 704 of the 93rd General Assembly

Title of Rule:

See attached index of rules amended.

Rule Status	Date Adopted by Agency	Effective Date
Amended <input type="button" value="v"/>	12/03/2021	<input type="radio"/> 10 Days After Filing
(Use drop down to select different status)	MM/DD/YYYY	<input type="radio"/> Other: _____ (if other, specify date)

☐

Rule above is proposed and will be replaced by final version

☐

Financial and/or Fiscal Impact Statement Attached

Certification of Authorized Officer

I hereby certify that the attached rules were adopted in compliance with Act 434 of 1967 as amended.

Signature:

Charles Montoya

Date:

12/14/2021

Title:

Administrative Law Judge

2021 DEC 20 AM 10: 27

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ARKANSAS POLLUTION CONTROL AND ECOLOGY

COMMISSION RULE AMENDMENTS INDEX

The following rules of the Arkansas Pollution Control and Ecology Commission have been amended following the expedited procedure of Act 704 of the 93rd General Assembly:

- a. Rule 1, "Prevention of Pollution by Oil Filed Waste";
- b. Rule 3, "Licensing of Wastewater Treatment Plant Operators";
- c. Rule 4, "Rule to Require a Disposal Permit for Real Estate Subdivisions in Proximity to Lakes and Streams";
- d. Rule 7, "Civil Penalties";
- e. Rule 9, "Fee Rule";
- f. Rule 11, "Rules for Solid Waste Disposal Fees; Landfill Post-Closure Trust Fund; Solid Waste Management and Recycling Fund Distribution; and Recycling Grant Programs";
- g. Rule 12, "Storage Tanks";
- h. Rule 15, "Arkansas Open-Cut Mining and Land Reclamation";
- i. Rule 17, "Arkansas Underground Injection Control Code";
- j. Rule 18, "Arkansas Air Pollution Control Code";
- k. Rule 20, "The Arkansas Surface Coal Mining and Reclamation Code";
- l. Rule 21, "Arkansas Asbestos Abatement Rule";
- m. Rule 22, "Solid Waste Management Rules";

- n. Rule 26, “Rules of the Arkansas Operating Air Permit Program”;
- o. Rule 28, “Rule of the State of Arkansas for County Recycling Programs”;
- p. Rule 29, “Arkansas Brownfield Redevelopment”;
- q. Rule 30, “Arkansas Remedial Action Trust Fund Hazardous Substances Site Priority List”;
- r. Rule 31, “Nonattainment New Source Review Requirements”;
- s. Rule 32, “Environmental Professional Certification”;
- t. Rule 33, “Motor Vehicle Racing Facility Rules”;
- u. Rule 34, “State Water Permit Rule”; and
- v. Rule 36, “Tire Accountability Program”.

**ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION**

**SUBJECT: Approval
of Amendments to APC &
EC Rules**

Docket No. 21-003-MISC

MINUTE ORDER NO. 21- 18

Pursuant to Act 704 of the 93rd General Assembly, the Arkansas Pollution Control and Ecology Commission hereby grants and approves the Division of Environmental Quality's Motion to Approve Rule Amendments, and approves the amendments to rules which are specifically set forth and contained in the mark-up drafts of rules provided to the Commission with the above-referenced motion; that further, the Commission orders that the existing effective date of each rule shall remain the same and that no substantive changes to these rules are promulgated or intended by these amendments.

**THIS 3RD DAY OF DECEMBER, 2021, BY ORDER OF THE ARKANSAS
POLLUTION CONTROL AND ECOLOGY COMMISSION.**

COMMISSIONERS:

<u>SUA</u>	S. Ausbrooks
<u>AB</u>	L. Bengal
<u>CC</u>	C. Colclasure
<u>JSF</u>	J. Fox
<u>MNG</u>	M. Goggans
	R. McMullen

<u>D.A. by 11</u>	D. Melton
<u>RM</u>	R. Moss, Jr.
<u>RR</u>	R. Reynolds
<u>R</u>	R. Roper
<u>D</u>	D. Vandergriff
<u>WWW</u>	W. Ward

10.27.21 SUBMITTED BY: Michael McAlister DATE PASSED: 12/03/21
R. Roper, Chair