



STATE OF WEST VIRGINIA
DEPARTMENT OF NATURAL RESOURCES
CHARLESTON 25305

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Director

August 14, 1978

N O T I C E

FILED IN THE OFFICE OF
SECRETARY OF STATE
THIS DATE 8-14-78

Rules and regulations effecting limitations on coal mining operations within certain distances of dwellings and public facilities have been proposed by the Reclamation Commission of the Department of Natural Resources. These regulations, filed in the Office of the Secretary of State on August 14, 1978, will, in part, implement provisions of the Federal Surface Mining Control Act of 1977 in West Virginia.

Notice is hereby given that on September 15, 1978, beginning at 9:00 a.m., a public hearing will be held in the Capitol Complex, Conference Rooms A, and B, Charleston, West Virginia, at which time all interested persons may submit oral and/or written comments addressing these rules and regulations.

From August 15, 1978, through September 15, 1978, the Commission will accept any data, objections, suggested amendments, etc., submitted by interested persons. No such comments will be considered if received after September 15, 1978, at the address noted below.

Those wishing to obtain copies of these rules and regulations may call or write Carolyn Null, Room 322, Department of Natural Resources, State Capitol, Charleston, West Virginia 25305; telephone: (304) 348-3267.

WEST VIRGINIA SURFACE MINING RECLAMATION REGULATIONS

DEPARTMENT OF NATURAL RESOURCES
FILED IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

Chapter 20-6
Series VII
(1978)

THIS DATE B-14-78

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PROPOSED

WEST VIRGINIA SURFACE MINING RECLAMATION REGULATIONS

Department of Natural Resources

Chapter 20-6
Series VII
(1978)

Subject: Rules and regulations pertaining to limitations on surface mining operations within certain distances of dwellings and certain public facilities.

SECTION 1. GENERAL

1.01. Scope - These regulations establish general and specific rules for limitations on surface mining operations within certain distances of dwellings and certain public facilities.

1.02. Authority - These regulations are issued under the authority of Article 6, Chapter 20, Code of West Virginia, as amended.

1.03. Effective Date - These regulations were promulgated on the 14th day of August, 1978.

1.04. Filing Date - These regulations were filed in the Office of the Secretary of State on the 14th day of August, 1978.

9F. Limitations

9F.01. - Surface Mining Operations Excluded - In addition to the limitations provided for under Chapter 20, Article 6 of the Code of West Virginia, as amended; after August 3rd, 1977, no surface mining operations shall be approved within three hundred (300) feet of any occupied dwelling, unless waived by the owner thereof, nor within three hundred (300) feet of any public building, school, church, community or institutional building, public park, or within one hundred (100) feet of a cemetery provided however, that this provision does not apply to surface mining operations

with valid permits issued on or before August 3, 1977, nor is this provision applicable to valid rights to surface and/or mineral existing on or before August 3rd, 1977.

BACKGROUND

The passage of the Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87) on August 3, 1977, necessitated amending Chapter 20, Article 6 of the State Code (Senate Bill 448) to provide the Reclamation Commission of West Virginia the authority to promulgate rules and regulations consistent with the Environmental Protection Performance Standards mandated by Section 515 of the Federal Act. These rules and regulations are necessary for the State to have authority to continue issuing surface mining permits and to maintain regulatory jurisdiction over mining operations during the interim period until full implementation of Public Law 95-87. The regulations are also necessary for the State to qualify for Federal grants authorized by Public Law 95-87.

A public hearing on the State's proposed rules and regulations was held July 27, 1978, in Charleston, West Virginia. Hundreds of pages of written comments, the transcript of the public hearing, and several technical manuals were carefully considered in the development of these final interim regulations.

Comments pertaining to each section and subsection of the proposed regulations have been summarized and addressed. New language, additions, and deletions have been incorporated into the new regulations where, in the opinion of the Commission, changes were warranted. By this procedure, the Commission hopes that the public will have a better understanding of the scope and objective of the regulations.

GENERAL COMMENTS

1. Several commenters indicated that coal refuse disposal and dams constructed of waste material were not addressed by these regulations. It should be specifically noted that West Virginia has been effectively regulating refuse disposal operations since 1972 under the Coal Refuse Disposal Control Act (Chapter 20, Article 6C) and the Dam Control Act (Chapter 20, Article 5D). Since State statute presently addresses all coal refuse disposal activities, to include provisions for permits, remedial action, orders of the Director, reclamation of abandoned coal refuse disposal piles, dam safety, and judicial review, the Commission finds that additional regulations would be redundant and unnecessary.

2. Citizen complaint procedures were not adequately covered by these regulations according to a few commenters. The Commission considers the complaint procedures outlined by Chapter 20, Article 6 and rules and regulations promulgated thereunder as adequate for the interim program until expanded upon by implementation of the final regulatory program authorized by Public Law 95-87.

3. Several respondents desired the adoption of specific regulations with respect to "Designating Areas Unsuitable for Surface Coal Mining" (Section 522 of Public Law 95-87). The Commission finds that this requirement is not mandated as a component of the interim program.

SECTION 2 - DEFINITIONS

1. Subsection 2.01. - Some commenters suggested a change to the

definition of acidity. Since the present definition has been in use for several years with no apparent difficulty, and the recommended changes offer little improvement, it was decided to leave the definition as presently written.

2. Subsection 2.02. - The Commission agreed with one reviewer to change the definition of "acid drainage" to acid mine drainage to clarify the source of acidity.

3. Subsection 2.04. - Several commenters recommended that the Sewell seam be added to the list of potentially acid overburden seams. The Commission concurs.

In addition, many commenters desired reference to specific seams deleted. However, it is thought that listing these seams adds clarity and direction to the definition.

4. Subsection 2.06. - In the definition for approximate original contour, it was commented that language be added after the word "resembles" to read "complements or improves the general surface configuration." In the opinion of the Commission, to do so would broaden the definition to the extent that it may be loosely interpreted so as to diverge significantly from the legislative intent of "approximate original contour."

5. Subsection 2.11. - Several commenters took exception to the definition of buffer zone. However, the Commission finds that this definition satisfies the requirements of both Public Law 95-87 and Chapter 20, Article 6 of the State Code.

6. Subsection 2.15. - Some reviewers took offense to the definition critical stream while others strongly supported its inclusion in the regulations. The Commission finds, after careful consideration, that critical streams, i.e. lightly buffered streams, are unique and valuable resources and by their nature are more greatly impacted by the introduction of acid mine drainage. Additionally, in view of their sensitive nature, the Commission strongly feels that these streams must receive special consideration with respect to mining operations within their watersheds.

7. Subsection 2.19. - In response to several commenters, Civil Service job description requirements state that a Surface Mining Reclamation Inspector-In-Training "exercises all authority and is assigned responsibility in accordance with the surface mining laws of West Virginia."

8. Subsection 2.24. - A definition for ephemeral stream has been added to this section between Section 2.23 - Drill Bench and Section 2.24 - Face Up.

9. Subsection 2.26. - Several commenters wanted to add state maintained roads to the definition haulageway or access road. However, according to Department of Highways administrative policy, there are no legal highways maintained by the State that are not owned by the State. Therefore, the definition will stand as presently written.

10. Subsection 2.28. - A definition for intermittent stream has been added to this section. The Commission has determined that 30 C.F.R. 710.5 allows maximum flexibility with a minimum of confusion with respect to the definitions for ephemeral, intermittent and perennial streams.

11. Subsection 2.32. - Several commenters pointed out that the definition of minerals in the Code of West Virginia was sufficient. Therefore, 2.32 was deleted as being redundant.

12. Subsection 2.34. - It was recommended by several reviewers that the word "equal" be included along with "higher and better land use" in the definition for mountaintop removal. The Commission concurs and finds that inclusion of the word "equal" is consistent with Public Law 95-87.

13. Subsection 2.37. - The Commission finds that a definition for operator is unnecessary and has deleted the term from the regulations so as not to be in conflict with the codified definition found in Chapter 20, Article 6.

14. Subsection 2.42. - To add clarification in response to several commenters, the phrase "and not backfilled" has been added to the definition of pit.

15. Subsection 2.45. - Several commenters recommended that "drilling" be eliminated from the definition prospecting, while others strongly approved. The Commission finds that Chapter 20, Article 6 encompasses sufficient authority for the inclusion of "drilling" in the referenced definition.

16. Subsection 2.57. - It was recommended that this subsection concerning surface effect of underground mining operations be made consistent with Subsection 2.58. in regard to the time frame for application of these regulations. Therefore, in the interest of consistency, the phrase "after the date of enactment of these regulations" has been deleted from Subsection 2.58.

17. Subsection 2.58. - See above discussion on Subsection 2.57.

SECTION 3 - PROSPECTING

Several commenters made statements regarding recommended changes to this Section. However, it was determined that the recommendations were in reference only to changes in the State Code and thus were not considered pertinent to this discussion.

SECTION 4 - PERMIT REQUIREMENTS

1. Subsection 4.01. - Comments were received requesting the inclusion of a drainage control plan as part of the SMA application. The Commission finds that the inclusion of a topographic map as part of the pre-plan sufficiently covers this suggestion.

2. Subsection 4.02. - Several commenters requested notification of contractual assignment of operations to include notification of surety

companies. The Commission finds that this suggestion does not pertain to the relevancy of these rules and regulations.

3. Subsection 4.03. - In response to comments stating that only registered professional engineers should be considered qualified to complete mining and reclamation plans, the Commission notes that Chapter 20, Article 6 of the West Virginia Code specifically provides for "approved persons."

4. Subsection 4.10. - Several commenters stated that this subsection does not adhere to 30 C.F.R. Subsection 715.12(c) with regard to location of perimeter markers. It is the position of the Commission that the perimeter marker provisions of this subsection are consistent with the aforementioned Federal regulation.

5. Subsection 4.13. - A statement requesting the deletion of mandatory flagged field slope measurements was received. However, flagged field measurements are required in order to assure accuracy in determining if down-slope placement of spoil may be permitted.

SECTION 5 - HAULAGEWAYS OR ACCESS ROADS

1. Subsection 5.01. - Several commenters wanted the phrase "field flagged at one hundred (100) feet intervals," withdrawn from this subsection. In partial satisfaction of this request, "field flagged" was deleted to allow some discretion in the type of mark employed.

2. Subsection 5.02. - Design changes to this subsection concerning road construction were requested by some reviewers. However, in view of the high degree of success with the present criteria, the Commission has determined that a change is not necessary.

3. Subsection 5.06. - It was suggested by several respondents that provisions should be made to provide more flexibility in culvert design. The Commission concurs and has incorporated the necessary language into the revised regulations.

4. Subsection 5.11. - "Coal refuse" was deleted from this subsection because "acid-producing or toxic materials" provides sufficient control and permits the use of other acceptable materials such as red dog.

5. Subsection 5.13. - Comments received pertaining to dust control on public roads are not directly applicable to either State or Federal surface mining laws.

6. In reference to the comment that a new subsection 5.17. be added to provide flexibility in the construction of infrequently used service roads, it has been determined that sufficient flexibility already exists under Chapter 20, Article 6.

SECTION 6 - BLASTING

1. Subsection 6.02. - In response to questions regarding the certification of blasting personnel, the Commission finds that according to

State statute, certification is the responsibility of the State Fire Marshall.

2. Subsection 6.03.a. - It was pointed out to the Commission that use of the term "blasting site" was not consistent with Public Law 95-87 which specifies the term "permit area." The Commission has duly noted this inconsistency and has made the necessary correction.

3. Subsection 6.03.d. - It was pointed out that there is an adequate mechanism under this section for those parties desiring a pre-blast survey to have such a survey conducted. Authorizing the Director to require a pre-blast survey therefore, serves no useful purpose and has been deleted.

4. Subsection 6.07. - One commenter requested permission to utilize an audible signal other than an airhorn. In the interest of safety and consistency, the Commission believes that only one signal (i.e. audible airhorn) is acceptable.

5. Subsection 6.08. - In response to the suggestion of several reviewers, wording to require guarding unauthorized entry ten minutes prior to and after blasting has been incorporated into this subsection.

6. Subsection 6.12. - Some commenters desired to increase while others wanted to decrease the maximum peak particle velocity. Past experience has indicated that 1-inch per second is not excessive with regard to the maximum weight formula. In addition, the regulation is consistent with 30 C.F.R. Subsection 715.18.

7. Subsection 6.15. - Several reviewers indicated disagreement with the necessity for plotting specific blast points on a working map. The Commission realizes the complexity of placing the location of several shots on the same general area of the map. However, in order to insure adherence to the scale distance formula, the map is deemed necessary.

8. Subsection 6.16. - This subsection has been deleted since the amount of explosive material is already covered by Subsection 6.15.j. and is therefore, thought to be redundant and unnecessary.

SECTION 7 - PROTECTION OF THE HYDROLOGIC SYSTEM

1. Subsection 7.01. - Several commenters wanted this subsection either changed or deleted. However, the Commission has determined that this subsection is necessary for the long-term protection of the environment.

2. Subsection 7A.01.h. - Many commenters wanted to implement the waiver on pre-mining overburden analysis when it has been shown that surface mining will not result in significant acid production. The Commission finds that in situations where past mining experience has shown that surface mining operations will not result in significant acid production, the collection of pre-mining sampling and analysis data would serve no useful purpose.

3. Subsection 7A.02.b. - Several commenters recommended deletion of this subsection in deference to the use of National Weather Service data. The Commission finds that in view of the minimal expenditures required for rain gauge equipment and the benefits derived from site specific data, this requirement is well justified.

4. Subsection 7A.02. c. - Comments on this subsection varied with regard to parameters to be monitored and monitoring frequency. The Commission has determined that this subsection gives the Director authority to require monitoring of other parameters deemed necessary. Daily monitoring of these parameters is presently a requirement under existing regulations.

5. Subsection 7A.03. - Comments on this subsection ranged from total deletion to deletion of only certain phrases to make the impact of this section less severe. Others indicated that requirements for proper treatment and handling of acid and toxic-forming materials are not consistent with Federal requirements. The Commission finds that the Director has flexibility to use his discretionary powers to apply this subsection where necessary and allow variances where needed. Handling of acid and toxic-forming materials to satisfy Federal requirements is covered elsewhere in these revised regulations.

6. Subsection 7A.04. - Several commenters suggested that additional parameters be required as part of the operation pre-plan. Review of existing requirements indicate that the following parameters have historically been made part of a proposed surface mining pre-plan (Application for Mine Drainage): pH, iron, total hot acidity, total mineral acidity, total alkalinity, total aluminum, total manganese, total sulfates, dissolved solids, and suspended solids. Therefore, these parameters have been added to this regulation and are not deemed to be a significant change from the proposed regulations or existing requirements.

7. Subsection 7B.03. - It was recommended by several reviewers that the last sentence of this regulation be deleted. It is the Commission's position that the first part of this subsection provides that all Federal laws must be adhered to. Since the same provisions found in the last sentence are also contained in the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92-500) and regulations promulgated pursuant thereto, inclusion here is deemed redundant.

8. Subsection 7C.01. - Several commenters have requested that an owner of interest not be required to establish that his water supply has been affected. The Commission finds that in any case where an individual has been adversely affected, he must show reasonable proof of such. This provision, as written, simply reiterates this point for clarity.

SECTION 8 - DRAINAGE SYSTEM

1. Subsection 8.02.a. - Some commenters indicated that sediment standards referenced in this subsection were inadequate, while others suggested that the standards in the new draft final OSM regulations be implemented. Pursuant to considerable experience in this regard, the Commission has determined that .125 acre/ft. per acre of disturbed area is adequate.

2. Subsection 8.02.c. - Many commenters wanted 100 percent clean-out of sediment structures deleted and replaced with 60 percent. The Commission feels that each site should be evaluated individually and action taken commensurate with the findings of the on-site inspection.

3. Subsection 8C.01. - In response to one commenter concerning the Drainage Handbook for Surface Mining in West Virginia, the Commission considers surface disturbances related to the development of underground mines as not dissimilar from those encountered in surface mining operations.

4. Subsection 8D.01. - In regard to use of only registered professional engineers, see response to subsection 4.03.

SECTION 9 - METHOD OF OPERATION

1. Subsection 9.02. - One commenter alleged that this subsection did not provide for adequate soil productivity to support the approved post-mining land use. In partial satisfaction of addressing this allegation, the Commission has changed the word "vegetation: in this subsection to "the approved postmining land use." This change, coupled with the information developed from site analysis as provided by Subsection 7A.01., will adequately fulfill the purported deficiency.

2. Subsection 9.03. - Some commenters suggested that the phrase "test, treat, and blend" be inserted into this subsection to provide material suitable for a growth medium and/or assist with water pollution control. The Commission concurs.

3. Subsection 9.07. - The phrase "most moderate slope possible" has been deleted in response to the request of one commenter and its omission is deemed inconsequential for the purpose of this subsection.

4. Subsection 9.09. - In response to several comments concerning the allowable depth of gullies, 9-inch gullies are the maximum standard allowed by the Federal regulations (30 C.F.R. Subsection 715.14).

5. Subsection 9.11. - In reference to several comments concerning time-frames for keeping operations current, it should be noted that subpart f. provides for flexibility where necessary.

6. Subsection 9B.01. - As noted by one commenter, an oversight was brought to the Commission's attention in that the phrase "surface mining" should be inserted before the word "operation" in this subsection.

7. Subsection 9B.03. - In response to the questions asked by one commenter concerning bonding above a highwall, the Commission feels that the subsection is self-explanatory.

8. Subsection 9C.02. - A few comments were received concerning the width of the outcrop barrier. The Commission has determined that the outcrop should be established on a case by case basis.

9. Subsection 9C.05. - Several commenters pointed out that the term "public use" is not consistent with the Federal Act. While the Commission recognizes the difference between "public use" and "public facility," it is thought that "public use" is more appropriate in view of the rural nature of West Virginia and provides a better mechanism for providing the community with use of lands from which they would otherwise be denied.

10. Subsection 9D.04. - Several commenters suggested that the phrase requiring all organic material to be removed from the disposal area, be deleted. This requirement is based on standard engineering practice to insure stability; thus, a necessary requirement to assure stability of the fill.

11. Subsection 9E.06.a. - Many commenters wanted the maximum possible cleared area of 3.0 acres changed to the smallest practical acreage. Based upon considerable past experience, the Commission finds that disturbances greater than 3.0 acres prior to constructing the first lift of the valley fill increase sedimentation problems and stimulate other adverse environmental impacts.

12. Subsection 9E.06. Variance - Some commenters requested no variances be granted for the valley fill technique. However, the Commission notes that a final draft report by Skelly & Loy for the U. S. Bureau of Mines states: "Each site must be investigated to determine specific physical characteristics, then the operator should have the option to choose the optimum method which will produce an environmentally sound fill ..." The valley fill specifications found in OSM regulations were taken from an earlier draft of this same report.

SECTION 12 - REVEGETATION

1. Subsection 12.01. - Two commenters questioned the Director's approval authority for private revegetation contractors. Specific provision for this authority can be found in Chapter 20, Article 6, Section 10 of the West Virginia Code.

2. Subsection 12.03. - Several commenters thought that this subsection on reference areas should be written as it appears in the Federal regulations. The Commission feels, however, that the objective of revegetation is to promote quick stabilization and to provide a permanent diverse vegetative cover. Therefore, reference areas must be judged on a site by site basis.

3. Subsection 12B.01. - One commenter wanted to completely restructure the entire plant material specifications subsection. While it is the Commission's opinion that to do so would be highly desirable, a major modification at this time would not significantly improve upon desired results.

4. Subsection 12C.01. - One commenter was concerned about our requirement for mulching all disturbed areas. It should be noted that mulching is a requirement of the Federal regulations and has been found, in the experience of the Commission, to be necessary for revegetation enhancement as well as erosion control.

5. Subsection 12D.05. - Several commenters wanted to replace the 18 month vegetative release requirement with the more stringent Federal requirement of 5 years. However, since the 5-year requirement is not a component of the interim program, these comments were considered not valid at this time.

SECTION 16 - SURFACE EFFECTS OF UNDERGROUND MINING OPERATIONS

Several commenters desired the deletion of this section. The Commission finds that pursuant to the recent amendment to Chapter 20, Article 6, Section 23a of the State Code (Senate Bill 448), the authority to write regulations governing the surface effects of underground operations is clearly given to the Commission.

With respect to several suggestions to write separate regulations for deep mines, the Commission has carefully written these regulations so as to exclude deep mine operations from those sections that are not applicable. Therefore, to assure adequate environmental protection from the adverse surface effects of deep mine operations, the regulations as written, are the most expeditious and efficacious vehicle available.

SECTION 17 - MODIFICATIONS

In response to several reviewers who desired the modifications section deleted, the Commission notes that this section is expressly provided for by Chapter 20, Article 6.