

(a) Coal mine waste shall not be used for construction of impounding structures unless it has been demonstrated to the regulatory authority 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 impact of acid mine seepage through the impounding structure shall be discussed in detail in the design plan submitted to the regulatory authority in accordance with § 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 § 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 that meets the criteria of § 77.216(a) of this title 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 of a 6-hour precipitation event, or greater event as specified by the regulatory authority.

(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 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 § 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 impounding 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.

[48 FR 44029, Sept. 26, 1983, as amended at 53 FR 43606, Oct. 27, 1988]

**§ 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 regulatory authority 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 regulatory authority. Consideration shall be given to potential hazards to persons working or living in the vicinity of the structure.

[48 FR 44029, Sept. 26, 1983]

**§ 816.89 Disposal of noncoal mine wastes.**

(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

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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 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 mine waste be deposited in a refuse pile or impounding structure, nor shall an excavation for a noncoal mine waste disposal site be located within 8 feet of any coal outcrop or coal storage area.

[48 FR 44030, Sept. 26, 1983, as amended at 56 FR 65635, Dec. 17, 1991]

## §816.95 Stabilization of surface areas.

(a) 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 that 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.

[48 FR 1163, Jan. 10, 1983]

## §816.97 Protection of fish, wildlife, and related environmental values.

(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

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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 regulatory authority any State- or federally-listed endangered or threatened species within the permit area of which the operator becomes aware. Upon notification, the regulatory authority 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 regulatory authority any golden or bald eagle nest within the permit area of which the operator becomes aware. Upon notification, the regulatory authority shall consult with the U.S. Fish and Wildlife Service and also, where appropriate, the State fish and wildlife agency 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 regulatory authority 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