

DEPARTMENT OF THE INTERIOR**Office of Surface Mining Reclamation and Enforcement****30 CFR Parts 701, 786 and 829****RIN 1029-AB70****Abandoned Coal Refuse Sites**

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM) propose to amend our regulations to comply with the Energy Policy Act of 1992 (EPA). The EPA requires the Secretary of the Interior (Secretary) to develop regulations establishing environmental performance and reclamation standards for abandoned coal refuse remining operations. These standards must distinguish between refuse removal operations and on-site refuse reprocessing operations and must be premised on the distinct differences between removal operations, on-site reprocessing operations, and other types of surface coal mining operations. The Secretary may devise different performance standards than any of those set forth in sections 515 and 516 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), and separate permit systems if the Secretary determines, on a standard-by-standard basis, that a different standard may facilitate refuse removal and on-site refuse reprocessing operations in a manner that would provide the same level of environmental protection as under sections 515 and 516. We are proposing changes to our rules that respond to the EPA's requirements.

DATES: *Written comments:* Comments on the proposed rule must be received on or before 4:30 p.m. Eastern Time on March 28, 2007, to ensure our consideration.

Public hearings: Upon request, we will hold a public hearing on the proposed rule at a date, time, and location to be announced in the **Federal Register** before the hearing. We will accept requests for a public hearing until 4 p.m., Eastern Time, on February 7, 2007. If you wish to attend a hearing, but not speak, you should contact the person identified under **FOR FURTHER INFORMATION CONTACT** before the hearing date to verify that the hearing will be held. If you wish to attend and speak at a hearing, you should follow the procedures under "III. Public Comment Procedures" in the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: You may submit comments, identified by docket number 1029-AB70, by any of the following methods:

- *E-Mail:* osmregs@osmre.gov. Include docket number 1029-AB70 in the subject line of the message.
- *Mail:* Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 252-SIB, 1951 Constitution Avenue, NW., Washington, DC 20240.
- *Hand-Delivery/Courier to the OSM Administrative Record Room:* Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101-SIB, 1951 Constitution Avenue, NW., Washington, DC 20240.
- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

For detailed instructions on submitting comments and additional information on the rulemaking process, see "III. Public Comment Procedures" in the **SUPPLEMENTARY INFORMATION** section of this document.

If you wish to comment on the information collection aspects of this proposed rule, submit your comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Interior Desk Officer, via electronic mail, to OIRA_DOCKET@omb.eop.gov or via telefacsimile at (202) 395-6566.

FOR FURTHER INFORMATION CONTACT: Andy DeVito, Office of Surface Mining Reclamation and Enforcement, MS-252-SIB, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202-208-2701. E-mail: adevito@osmre.gov.

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I. Background**A. The Energy Policy Act**

Section 2503 of the Energy Policy Act of 1992 (EPA), Public Law 102-486, Title XXV, addresses coal remining and directs promulgation of the abandoned coal refuse regulations proposed by this rulemaking. Sections 2503(a) through (d), respectively, amend the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (SMCRA), to address permit blocking under section 510(c) of SMCRA (30 U.S.C. 1260(c)), modify revegetation responsibility periods at section 515(b)(20) (30 U.S.C. 1265(b)(20)), add definitions at section 701 (30 U.S.C. 1291) for "lands eligible for remining" and "unanticipated event or condition," and revise Abandoned Mine Land (AML) eligibility at sections 402(g)(4) and 404. Regulations implementing these amended SMCRA provisions were proposed and later codified in a final rule. 60 FR 58480 (November 27, 1995).

Section 2503(e) of the EPA, which was codified at 30 U.S.C. 1251a, amends SMCRA by adding a new section for Abandoned Coal Refuse Sites that focuses solely on the remining of abandoned coal refuse sites. This proposed rulemaking is intended to implement the general directive of section 2503(e)(1) requiring the Secretary to issue regulations establishing environmental protection performance and reclamation standards, and separate permit systems, applicable to operations for the on-site reprocessing of abandoned coal refuse and operations for the removal of abandoned coal refuse. Coal refuse, discussed in greater detail below, is the waste resulting from the cleaning of mined coal. Abandoned coal refuse sites are lands on which refuse was placed prior to the passage of SMCRA, and that were not adequately reclaimed when mining was completed. Abandoned coal refuse sites are eligible for reclamation under Title IV of SMCRA using money from the Abandoned Mine Land Fund when available.

Section 2503(e)(2) further directs that the standards and permit systems referred to above distinguish between those operations that reprocess abandoned coal refuse on-site, and those operations that completely remove abandoned coal refuse for direct use or for reprocessing at another location. The term "reprocessing operations," as used throughout this rulemaking, is limited to on-site reprocessing since any reprocessing at a site other than an abandoned coal refuse site would be regulated under existing 30 CFR part 827 and would not be a part of this

rulemaking. The standards and permit systems authorized by section 2503(e) are to be premised on the distinct differences between operations for the on-site reprocessing, and operations for the removal, of abandoned coal refuse and other types of surface coal mining operations. Section 2503(e)(3) authorizes the Secretary to devise different standards from those in sections 515 and 516 of SMCRA (515/516), and devise a separate permit system, if the Secretary determines on a standard-by-standard basis, that a different standard may facilitate the on-site reprocessing, or the removal, of abandoned coal refuse in a manner that would provide the same level of environmental protection as under sections 515/516.

Finally, section 2503(e)(4) requires the Secretary to submit a report to the Committee on Interior and Insular Affairs (subsequently renamed the Committee on Natural Resources) of the United States House of Representatives, and to the Committee on Energy and Natural Resources of the United States Senate. The report must be submitted not later than 30 days prior to the publication of proposed regulations and must contain a detailed description of any environmental protection performance and reclamation standards, and separate permit systems, devised pursuant to that section. The report has been submitted and is available for review as part of our administrative record for this rulemaking.

In response to these provisions of the EAct, we are proposing a separate set of performance standards for operations that reprocess abandoned coal refuse on-site and/or remove the refuse from the site. These proposed performance standards are intended to provide the same level of environmental protection as under sections 515/516 of SMCRA, while facilitating the on-site reprocessing and/or removal of abandoned refuse. In the course of developing our regulations, we also considered the appropriateness of developing separate permit systems for both on-site reprocessing and removal operations. However, our consideration of this issue did not identify sufficient differences between the requirements applicable to on-site reprocessing and removal operations to warrant separate permit systems for each of these two types of refuse operations. Therefore the proposed regulations provide for a single permit system to address both on-site reprocessing and removal operations.

The requirements that we are proposing for the permit information in Part 786 and for the performance

standards in Part 829 are in some instances different from existing permit information requirements or performance standards. However, the proposed rule is not intended to result in a weakening of the environmental standards but rather to reflect the difference between coal refuse remining operations and other coal mining operations. For example, we do not universally include the monitoring requirements for surface and ground water found in Part 780. However, our part 786 proposal related to water monitoring data for coal refuse removal operations reflects that some data requirements are not appropriate for reasons we discuss, or because similar kinds of data are expected to be readily available as part of the National Pollutant Discharge Elimination System program authorized under the Clean Water Act, 33 U.S.C. 1251, *et seq.* As you review the rule, we specifically request comments on whether the environmental standards are appropriately modified to reflect the unique nature of remining operations.

The following discussion provides additional background on abandoned coal refuse and the information used in developing the proposed regulations.

B. Outreach Summary

We conducted an extensive outreach program to solicit comments, concerns and ideas for regulatory changes with regard to implementing the provisions of section 2503(e) of the EAct. The initial outreach, completed in the early months of 1993, consisted of two components. The first component consisted of telephone contact and written follow up with representatives of industry, the States, and with environmental, citizen, and conservation organizations and groups. The second component of the outreach consisted of visiting three active coal refuse operations in West Virginia, Pennsylvania, and Illinois with representatives of the States, industry, and citizen/environmental groups and again soliciting comments, concerns, and suggestions. We identified and analyzed the issues that were raised during the 1993 outreach.

In 1997 and 1998, we conducted outreach with selected members of a remining task force of State and Federal coal mining and Clean Water Act regulators whose charge was to identify ways to increase AML reclamation through remining activities. A number of the same comments and concerns as were recorded during the 1993 outreach were raised and discussed during this latter outreach. Further, we attempted to develop preliminary regulatory language

with this group based on their collective experiences with coal refuse.

The outreach efforts were comprehensive. All information pertaining to the outreach activities, with particular emphasis on the 1993 analysis of issues, was reviewed and carefully considered in preparing the current proposal. Because there have been no statutory changes to SMCRA and no regulatory developments that could impact the regulation of coal refuse operations since passage of the EAct in 1992, we believe that additional outreach prior to the publication of the proposed regulations was not called for. Once the proposed regulations are published in the **Federal Register**, members of the public will have the opportunity to submit written comments and make oral presentations at a public hearing if they so desire.

C. Identification of Distinct Differences Between Abandoned Coal Refuse Remining Operations and Other Surface Coal Mining Operations

Before discussing the differences between abandoned coal refuse remining operations and all other surface coal mining operations, we need first to briefly discuss the relationship between remining operations and other surface coal mining operations. For this purpose, there are two major types of surface coal mining operations:

1. Operations that mine coal from sites on land that has not been disturbed by previous coal mining operations, popularly called "virgin operations;" and

2. Operations that mine coal from sites on land that has been disturbed by previous coal mining operations, popularly called "remining operations." Sites that were mined before the passage of SMCRA in 1977 may, or may not, have been adequately reclaimed. Unreclaimed sites and sites that were not reclaimed to the standards later set forth in SMCRA are popularly called "abandoned sites" and are eligible for reclamation under the AML program, codified at 30 CFR Subchapter R-Abandoned Mine Land Reclamation.

In turn, remining operations fall into two major categories:

1. Operations that mine coal in its original geologic location (the mining of prior underground workings after the overburden has been stripped away and the taking of additional mining cuts from an existing highwall are both examples of remining operations that mine coal in its original geologic location). Remining operations that mine coal in its original geologic location have the potential to remove or

otherwise disturb rock strata that serve as aquifers.

2. Operations that mine coal not in its original geologic location (coal refuse removal and coal refuse on-site reprocessing operations are examples of remining operations that mine coal not in its original geologic location. This coal refuse was considered waste material at the time that the initial mining occurred). Because abandoned coal refuse operations do not mine coal in its original geologic location, they do not have the potential to remove or otherwise disturb rock strata that serve as aquifers.

As noted before, section 2503(e) of the EPCA directs the Secretary to propose separate performance standards and permitting systems premised on the distinct differences between operations for on-site reprocessing and operations for removal of abandoned coal refuse, and other types of surface coal mining operations. The most fundamental difference between abandoned coal refuse remining operations, including both removal and on-site reprocessing operations, and other surface coal mining operations, relates to the nature and occurrence of the affected coal deposit. Both types of abandoned coal refuse remining operations mine unconsolidated piles of broken coal that have been previously mined at other locations by surface or underground methods. These unconsolidated piles are the residual waste product generated by cleaning previously-mined coal at processing plants. All other surface coal mining operations, including other types of remining operations, remove coal from its natural undisturbed geologic location.

Another difference between abandoned coal refuse remining operations and other mining operations is that the abandoned coal refuse remining operations are conducted on sites that are different from those of other surface coal mining operations in that they generally have (1) No overburden, (2) no topsoil, (3) limited or no revegetation, (4) a coal/rock mix of varying heating value, (5) limited or no current beneficial land use, and (6) existing water quality problems and other environmental degradation. Unlike other surface coal mining operations, abandoned coal refuse remining operations will generally disturb little, if any, previously undisturbed land outside the abandoned coal refuse site. Also, because topsoil commonly no longer exists, or is buried under the refuse at these sites, abandoned coal refuse remining operations have to utilize alternative vegetation-support material.

Because abandoned coal refuse remining operations do not have to remove overburden in order to uncover the mineable refuse, they neither create highwalls and overburden spoil nor remove the host rock of the ground-water aquifers. Furthermore, because the refuse at abandoned coal refuse sites was most often placed without regard to stability, erosion and surface- and ground-water impacts have commonly resulted. Therefore, almost all abandoned coal refuse remining operations have excellent potential for improving the adverse conditions that, in most cases, already exist at these abandoned sites. This improvement is typically accomplished by reducing the volume of refuse and its associated potential for acid mine drainage, stabilizing surface conditions, and reducing the potential for refuse fires.

There are several differences between abandoned coal refuse removal operations and on-site reprocessing operations that warrant the distinct performance standards and permitting requirements that we are proposing for each. Most significantly, refuse removal operations generate little, if any, residual waste and no wet refuse waste, as compared to that generated by on-site reprocessing operations. Further, refuse removal operations do not require on-site reprocessing or preparation plants with their associated process water circuits, discharges, and ponds. Finally, most refuse removal operations will be of shorter duration than on-site refuse reprocessing operations.

Abandoned coal refuse removal operations are comparable to coal refuse reclamation projects done under the AML program that rework, regrade, and revegetate abandoned coal refuse sites in order to eliminate fires and other safety hazards, to stabilize the affected areas, or to reduce off-site environmental degradation. However, unlike abandoned coal refuse AML projects, which are selected for reclamation based on the seriousness of the site hazards or environmental degradation, coal refuse removal operations always reduce the volume of refuse and are selected for mining based on the heating value of the refuse. On the other hand, refuse on-site reprocessing operations are more comparable to off-site preparation plants, which are regulated under the performance standards of 30 CFR part 827 (Coal Preparation Plants Not Located Within The Permit Area), than to other surface coal mining operations. However, on-site reprocessing operations, unlike off-site preparation plants, typically reduce the volume of refuse at the site, and typically affect

very little, if any, previously undisturbed land.

D. Coal Refuse

As used here, "coal refuse" refers to the solid material resulting from the deposition in piles of coal mine waste or refuse previously generated during coal processing that separates coal from unwanted physical or chemical impurities. The primary objectives of coal processing are to (1) Clean the coal by separating out rock, earthen materials, and other noncoal material; (2) reduce the ash and sulfur content; (3) increase the heating value, expressed in British thermal units (Btu); and (4) provide a product sized to the consumer's specifications. While coal processing historically used only mechanical means to separate out the unwanted materials, because of technological improvements, coal processing now can use liquids with different specific gravities to separate lighter coal from the heavier non-coal rock or earthen materials. In a typical modern coal processing plant, raw coal is fed through a mechanical breaker or crusher, which reduces the coal to a more uniform size and makes an initial separation of rock from the coal by exerting enough force to crush the coal but not the harder rock. The resultant product is then passed through screens, shakers, vibrating tables, cyclones, and/or other heavy-medium separators where turbulence is created to float the coal and to sink the rock. Such heavy-medium separators utilize a great deal of water, and commonly need considerable land area for associated ponds and slurry cells.

Over the years, the percentage of the annual United States coal production that has been processed in this fashion has fluctuated significantly. This percentage increased steadily from 1920, when less than five percent of the coal mined was mechanically cleaned, to 1948, at which time about 30 percent of the total coal production was processed. From 1948 to 1961, coal production declined drastically, but the percentage of processed coal increased to nearly 66 percent. From 1961 to 1977, the year SMCRA was enacted, annual coal production increased from 403 to 691 million tons. This increase was entirely attributed to an increase in surface mining production. At the same time, the percentage of coal being processed by mechanical and liquid means declined to 34 percent. This decrease in the percentage of coal being processed occurred because (1) Coal mined by surface mining methods normally contains less non-coal material, therefore requiring less

processing than underground-mined coal; and, (2) only a relatively small amount of coal used for power generation was being processed in order to limit sulfur emissions.

The residue from coal processing is called "coal processing waste," or "coal refuse," and varies physically and chemically, depending upon the coal source and the process method used. Depending on the degree of size reduction achieved at the processing plant, coal refuse may vary between coarse (+28 mesh) and fine (−28 mesh). Usually, the coarse refuse was disposed of in an embankment or landfill, while the fine refuse was impounded in slurry ponds or run through vacuum filters and the resultant filter cake mixed with coarse refuse for disposal. Because many of the older processing plants did not include systems to recover fine coal, a large number of refuse slurry ponds and coal refuse piles contain materials with a relatively high Btu content. These refuse materials also contain pyritic rock and other impurities that are primarily associated with the formation of acid mine drainage (AMD) and are often referred to as "acid-forming materials." Under this proposed rule, removal operations would physically remove acid forming materials from the site thus reducing or eliminating the potential for AMD. In contrast, on-site reprocessing operations would retain the acid forming materials on site but place them in an environmentally stable configuration that would minimize surface water infiltration and exposure to air. This required placement would further reduce the potential for AMD.

E. Coal Refuse Distribution

Over three billion tons of coal refuse were deposited on surface lands prior to the enactment of SMCRA. Virtually all of this coal refuse has some heating value. However, depending on the sophistication of the original coal cleaning process that produced the refuse, the heating value of the refuse varies widely.

In the late 1990s, we sought to obtain factual information on coal refuse piles such as their size and number, coal resources available, and potential environmental enhancements that might be achieved from the re-mining of the piles and subsequent reclamation of the site. The agency anticipated that the results from such a study could be utilized in a coal refuse rulemaking in lieu of mostly anecdotal information that then existed. Accordingly, we funded a coal refuse characterization study conducted by the National Mine Land Reclamation Center at West

Virginia University. The study included collecting site-specific field data on the chemical and physical properties of coal refuse piles that were less than 25 acres in size, assembling information from State inventories of refuse piles, and using these data to prepare estimates of coal resources and potential environmental gains that might be realized from the re-mining of those sites. We chose the 25-acre size limitation for the study because of the enormous number of piles of that size or less, scattered throughout mining communities and the fact that their removal would provide a relatively quick and dramatic improvement to nearby communities. The study also explored the uses of coal refuse and the differences between refuse pile removal operations and coal mining operations on previously undisturbed lands. The study contained projections of coal resources and potential environmental enhancements for all abandoned coal refuse sites as well as those sites that were classified as small sites (less than 25 acres). Although the findings of the study did not reflect the entire universe of abandoned refuse piles, we believe the findings also shed light on the benefits that might be realized by re-mining larger piles.

The final report on this study was provided to us on August 11, 1999, and was titled "Physical and Chemical Characteristics of Small Coal Refuse Piles." The report provides data and projections that indicate more than 2000 refuse sites exist (in Alabama, Illinois, Kentucky, Ohio, Pennsylvania, Virginia and West Virginia), covering approximately 37,000 acres. More than 50% of the area covered by this coal refuse has economically mineable coal amounting to approximately 518 million tons. If all of this mineable coal were removed, acid-producing material capable of generating 30 million tons of acid would also be removed, thus preventing it from leaching into and further degrading local ground and surface water. Some of the other recommendations and conclusions in the report include:

1. The refuse piles constitute an economic resource—many piles can yield coal for fluidized bed combustion, off-site processing, or other uses.
2. Significant environmental improvement is possible through removal of the refuse piles and thus elimination of the problem attributed to the refuse pile.
3. There are a number of significant differences between coal refuse removal operations and other surface mining operations on previously undisturbed sites that would support different

regulations for these two types of operations.

4. It appears that the environment can be further protected and improved through an expedited permit under SMCRA that would serve as an incentive for coal refuse pile removal.

F. Coal Refuse Utilization

The Btu value of coal refuse varies widely depending upon the percentage of coal in the refuse pile. The 1999 final report surveyed seven States with coal refuse piles and indicated that the percentage of coal that could be recovered from the piles ranged from a low of 27.5 percent to a high of 98.9 percent. The 1999 final report also discussed a number of possible uses for coal refuse. The study found that coal refuse can be burned directly or reprocessed to separate the waste rock from the burnable coal, by utilizing modern coal cleaning technology. Because the early means of processing coal were inefficient and did not separate all the coal from the waste material, early refuse piles commonly contain material with a heating value of 5,000 Btu or more per pound. Refuse burning power plants and co-generation plants utilizing fluidized bed combustion technology are currently in use and provide a ready market for coal refuse from many sites.

Because fluidized bed combustion processes accept a wider range (size and quality) of material than pulverized coal boilers, fluidized bed combustors can burn refuse without prior efforts to separate coal from the rock so long as the material is properly sized and contains a minimum Btu. This minimum Btu factor is commonly obtained by blending (mixing together fuels with higher and lower Btu values) in order to maintain a fairly consistent feed stock for the combustion chamber. Refuse sites generally have a range of coarse and fine material that can either be directly used in a fluidized bed or reprocessed and sized prior to such use. However, refuse sites consisting primarily of slurry may not be as easily utilized because of restrictive size and moisture specifications of the end user, even though the slurry may have a high Btu value.

Waste-burning facilities that use fluidized bed combustors with a sorbent limestone bed can burn coal refuse with a 5,000 Btu content, limit sulfur and nitrogen oxide (NO_x) emissions, and maintain higher heat transfer rates within the combustor better than is possible using conventional combustion processes. Because of the high ash content of the coal refuse feed stock (as much as 50%) and limestone bed, the

resultant ash from the plant may be not only as much as 70% of the original volume of the refuse burned but also high in alkalinity. When this ash is returned to the refuse area for disposal, it can be very effective in counteracting residual acid problems.

Large power production facilities commonly require that coal refuse first be reprocessed to increase its Btu value by separating the impurities from the coal. Coal refuse reprocessing operations, particularly those that utilize specific gravity to separate coal from the waste rock, may require considerable land space. Reprocessing of coal refuse by portable washers, however, typically requires minimal additional space. The location selected for coal refuse reprocessing operations, whether on or off the refuse site, depends on numerous factors including, but not limited to, the hauling distance to the end-user, the volume of material to be cleaned, and the type of reprocessing to be used.

Abandoned coal refuse has also been utilized for purposes unrelated to Btu value. Refuse has been used commonly as backfill material in large subsidence abatement projects. Also, "red dog," a hard, reddish residual material resulting from refuse fires, has long been used for road base. The proposed regulations are not intended to apply to or regulate removal of abandoned coal refuse for these types of non-energy uses.

G. Existing Regulation of Coal Refuse

Even though SMCRA, as originally enacted, did not directly address the regulation of abandoned coal refuse, the Act's implementing regulations at 30 CFR 700.5 expressly include the extraction of coal from coal refuse piles within the definition of "surface coal mining operations." The definition of "reclaimed coal" at 30 CFR 870.5 (47 FR 28593, June 30, 1982), upon which AML fees are owed, includes coal recovered "from a deposit that is not in its original geologic location" as does the definition of "surface mining activities" at 30 CFR 701.5. On this basis, we have historically interpreted the permitting requirements and the performance standards promulgated under the permanent regulatory program for all surface coal mining operations to apply to operations that either remove refuse or reprocess it on-site. This means that, despite the fundamental differences between abandoned coal refuse remining operations and other surface coal mining operations, both types of operations are currently subject to the same regulations.

H. Abandoned Mine Land Reclamation Projects

Prior to the enactment of SMCRA and its implementing regulations, significant amounts of coal refuse were often discarded and placed with little, if any, engineering design. While some abandoned refuse sites are quite stable and have naturally revegetated, most sites contribute to environmental degradation, constitute safety hazards, or both. Problems stemming from these coal refuse sites include fires with associated smoke hazards, wind and water erosion from barren surfaces, and the leaching of acidic and other toxic materials into the surface and ground water. Abandoned coal refuse sites have caused, and continue to cause, public health and safety problems and environmental impacts that are currently being addressed through our Title IV AML Program.

At the same time that we were working on the development of a proposed rule to implement the EPL Act, we published a proposed rule in 1998 and a final rule in 1999 to enhance reclamation of abandoned coal sites under the AML program (64 FR 7470, 7483; February 12, 1999). The purpose of that rule, popularly referred to as the "AML Enhancement Rule," was to encourage additional AML reclamation with the same amount of AML funding by allowing the cost of certain approved AML projects to be offset by the extraction and sale of coal, when the removal of that coal was physically necessary to accomplish AML reclamation of the project. See 30 CFR 707.5 and 874.17. The AML Enhancement Rule was designed for situations in which the mining of the coal refuse was incidental to a government-financed construction project. Among the kinds of AML projects allowed under that rule were those that included the removal of coal refuse piles that had little or no likelihood of being mined under a Title V permit and that posed continuing significant environmental problems such as acid mine drainage discharges. The proposed rule supplements but does not supersede the AML Enhancement Rule by providing a way to facilitate the mining and reclamation under Title V of abandoned refuse sites.

Since 1977, the AML program has successfully reclaimed about 25,307 acres of abandoned refuse at an expense of over \$320 million. As of September 30, 2005, reclamation of an additional 2,515 acres at sites with abandoned coal refuse has been funded with \$26.5 million, but not completed. There are an additional 22,128 acres of coal refuse

that have been identified as high priority AML sites that would cost an estimated \$327 million to reclaim but that have not yet been funded.

Historically, through September 30, 2004, approximately 23 percent of the project funds spent through our AML reclamation program have been used to remediate public health and safety problems and the environmental impacts associated with abandoned coal refuse sites. We recognize, however, that the current projections of future AML projects may change if conditions at individual abandoned coal refuse sites worsen. For example, a low-priority abandoned refuse site generally is given a higher priority if it catches fire. Nonetheless, unless the industry remedies the problems by first mining abandoned coal refuse and then reclaiming the sites, we expect the AML program will require many years to fully address all the listed problem refuse piles.

I. National Pollutant Discharge Elimination System Program

We believe that significant site-specific hydrologic data will be available to the SMCRA regulatory authority (RA) from data generated under the Clean Water Act and under the National Pollutant Discharge Elimination System (NPDES) program. This program is administered by either the U.S. Environmental Protection Agency (EPA) or by States that have been approved by EPA to implement the NPDES program. The program requires all point-source discharges, from both existing and new sources, to meet the effluent limitations for the coal mining point source category of industrial discharges set out at 40 CFR part 434. In certain cases, baseline water quality and flow data for existing discharges and receiving streams are required in the NPDES permit application. Following NPDES permit approval, regular monitoring of the water quality and flow of all discharges and receiving streams is required. For an abandoned coal refuse remining site, we envision that pre-mining baseline data and monitoring data generated under the NPDES program can be used, in whole or in part, to meet some SMCRA permanent program requirements for determination of probable hydrologic consequences (PHC), cumulative hydrologic impact analysis (CHIA), and water monitoring during mining.

II. Discussion of the Proposed Regulations

We propose to add two definitions and two new parts to our regulations in Title 30 of the Code of Federal

Regulations. One definition will be added to section 701.5 and the other definition will be added to section 786.3 of new part 786. The permitting requirements for abandoned coal refuse remining operations will be in new part 786 and the performance standards for abandoned coal refuse remining operations will be in new part 829.

In those cases where the performance standards in regulations implementing a specific provision in section 515 or 516 of SMCRA are appropriate to abandoned coal refuse remining operations, we are proposing regulations that incorporate or closely follow existing regulations.

In some cases, because of the differences between abandoned coal refuse remining operations and other types of surface coal mining operations, the performance standards in a specific provision in section 515 or 516 of SMCRA would not be appropriate to abandoned coal refuse remining operations. However, when these performance standards could be adapted to abandoned coal refuse remining operations, we are proposing adapted standards. For example, it would be inappropriate, if not impossible, to require that an abandoned coal refuse remining operation restore the land at the site to a condition capable of supporting the uses that it was capable of supporting prior to mining as required by section 515(b)(2) of SMCRA; or that an abandoned coal refuse remining operation return the land occupied by a refuse pile to the pre-mining approximate original contour, as required by section 515(b)(3).

Accordingly, we are proposing land use and contour regulations that would provide protection similar to the protection provided by the land use and approximate original contour standards of SMCRA sections 515(b)(2) and 515(b)(3), but are adapted to the unique differences between abandoned coal refuse remining operations and other surface mining operations.

On the other hand, where the performance standards of a specific provision in section 515 or 516 of SMCRA would not be appropriate or could not be adapted to abandoned coal refuse remining operations, we will not be proposing any implementing regulations. For example, we are not proposing regulations to implement the prime farmlands standards of section 515(b)(7) because that statutory standard would not be appropriate for abandoned coal refuse sites.

Finally, regarding the EPCA provisions for a new permitting system for remining of coal refuse, we have reviewed the requirements and objectives of the permit application

provisions of section 507 of SMCRA, and we are proposing some changes in permit information requirements for coal refuse remining, particularly with regard to hydrology.

The proposed regulations in large part incorporate existing permitting requirements and performance standards. We expect that the abandoned coal refuse piles that will be remined will be mostly small-sized and hydrologically-impacted. Therefore, we believe that the scope and complexity of permit application information needed for these remining operations should generally be less extensive than the information otherwise required for surface coal mining operations.

In support of this rulemaking, we have carefully considered the dramatic environmental results achieved by the Commonwealth of Pennsylvania in permitting remining operations. During the period from 1985 through 1997, Pennsylvania issued 260 remining permits. Notably, ninety-eight percent of those permits resulted in pollutional loads that were lower than baseline or only slightly exceeded baseline and none of these required long-term treatment. We believe that the Pennsylvania remining data constitutes powerful, on-the-ground support for the appropriateness of our proposed regulations. We anticipate that our proposed regulations would also preserve or even enhance the pre-mining site hydrologic balance. Further details about the Pennsylvania remining data can be found below in section II.

In the next three sections we will discuss our standard-by-standard review of the performance standards of sections 515 and 516 of SMCRA, our proposed permit system for abandoned coal refuse remining operations, and our proposed regulations (section 701.5 and parts 786 and 829).

A. Standard-by-Standard Review of SMCRA Performance Standards

The purpose of this standard-by-standard review is to ensure that our proposed regulations provide the level of environmental protection required under sections 515 and 516 of SMCRA. In making this analysis, we considered the distinct differences between abandoned coal refuse removal or on-site reprocessing operations and other surface coal mining operations. As noted earlier, the most important distinction between abandoned coal refuse remining operations and other surface coal mining operations is that other surface mining operations disturb the original ground surface in order to remove coal from its original geologic

location over, under, or between rock strata. In contrast, abandoned coal refuse remining operations neither disturb the original ground surface or any rock strata nor remove coal from its original geologic location. Based on this fundamental distinction, we have sought to frame regulations that would meet the requirements of EPCA to not only provide the same level of environmental protection for refuse remining operations as under sections 515 and 516 of SMCRA, but also facilitate such operations.

Section 515 of SMCRA—Performance Standards for Surface Coal Mining Operations

(b)(1)—*Maximizing utilization and conservation of the fuel resource.* Abandoned coal refuse constitutes a solid fuel resource that often degrades the environment. The objective of this provision is to encourage maximum utilization of the coal resource so that the same site is not reaffected by successive operations as has sometimes occurred. Accordingly, the performance standards of section (b)(1) are appropriate to abandoned coal refuse remining operations. Our proposed regulation at section 829.3 would incorporate the requirements of section 816.59, which implements the standards of section 515(b)(1). See the preamble discussion of the proposed general requirements regulation at section 829.3. This would provide the same level of environmental protection as under section 515(b)(1) of SMCRA.

(b)(2)—*Restoring land to a condition capable of supporting the uses it was capable of supporting prior to mining.* The performance standards of section 515(b)(2) of SMCRA are not, in all cases, appropriate to abandoned coal refuse remining operations. For example, the land use that existed prior to mining is often not known or is not attainable because of limitations in materials either found at the site or remaining at the site after remining operations have been completed. Our proposed regulation at section 829.133 would require that the operator restore the land to a condition capable of supporting a use that is equivalent to or higher or better than the land use prior to commencement of the abandoned coal refuse remining operation. See the preamble discussion of the proposed postmining land use regulation at section 829.133. On this basis, our proposed regulation would provide the same level of environmental protection as under section 515(b)(2), as adapted to the unique characteristics of abandoned coal refuse remining operations.

(b)(3)—*Restoring approximate original contour.* Not all the performance standards of section (b)(3) are appropriate to abandoned coal refuse remining operations. For example, the approximate original contour standard would not be appropriate because the amount of material left after an abandoned coal refuse remining operation has been completed may be more or less than that needed to achieve approximate original contour. This is especially true in light of the high likelihood that prior mining activities have also been conducted at the site. In many cases, it may be impossible to determine the original contour of the site. Thus, we are not proposing regulations to implement the approximate original contour provision of section 515(b)(3). However, the backfilling and grading standards of section 515(b)(3) are adaptable to abandoned coal refuse remining operations. Our proposed regulation at section 829.102 would require that grading achieve stability, minimize erosion, and support the designated postmining land use. See the preamble discussion of the proposed grading regulation at section 829.102. Thus, this proposed regulation would provide the same level of environmental protection as under section 515(b)(3), as adapted to the unique characteristics of abandoned coal refuse remining operations.

(b)(4)—*Stabilizing and protecting surface.* The performance standards of section 515(b)(4) of SMCRA are clearly appropriate to abandoned coal refuse remining operations except for their topsoil requirements. Our proposed regulation at section 829.95 would incorporate the requirements of section 816.95, which implements section (b)(4), except that we would provide for the use of vegetative-support material instead of topsoil because of the common absence of topsoil at abandoned coal refuse remining sites. See the preamble discussion of the proposed surface stabilization regulation at section 829.95. On this basis, our proposed regulation would provide the same level of environmental protection as under section 515(b)(4), adapted to the unique characteristics of abandoned coal refuse remining operations.

(b)(5) and (6)—*Removing, storing, and restoring topsoil or most suitable material for supporting vegetation.* The performance standards of sections (b)(5) and (b)(6) are clearly appropriate to abandoned coal refuse remining operations except for the topsoil requirements for the reason cited in the section discussion of (b)(4). Our proposed regulation at section 829.22

would incorporate language analogous to the provisions of section 816.22 which implement the statutory standards, except that section 829.22 refers to vegetation-support material rather than topsoil. See the preamble discussion of the proposed regulation on soils and other vegetation-support material at section 829.22. On this basis, our proposed regulation would provide the same level of environmental protection as under sections 515(b)(5) and (b)(6), adapted to the unique characteristics of abandoned coal refuse remining operations.

(b)(7)—*Restoring prime farmland.* Refuse sites will not qualify as prime farm land nor will any overburden be removed. Accordingly, the performance standards of section (b)(7) are not appropriate to abandoned coal refuse remining operations. Thus, we are not proposing regulations to implement the prime farmland provisions of section 515(b)(7).

(b)(8)—*Retaining permanent impoundments.* Many abandoned coal refuse sites contain slurry impoundments. Some of those are high hazard structures or could become so if impounded fine refuse was removed and replaced with water. Other slurry impoundments, particularly in flat areas of the Midwest, are relatively shallow. In these latter cases, allowing ponds and wetlands to develop following refuse removal would be an environmental benefit and would facilitate refuse removal. The performance standards of section (b)(8) are, therefore, appropriate to abandoned coal refuse remining operations. Our proposed regulation at section 829.49 would incorporate the requirements of sections 816.49 and .56, which implement the statutory standards, and would specify two circumstances in which permanent impoundments may be retained. See the preamble discussion of the proposed impoundments regulation at section 829.49. On this basis, our proposed regulation would provide the same level of environmental protection as under section 515(b)(8), adapted to the unique characteristics of abandoned coal refuse remining operations.

(b)(9)—*Conducting auger mining.* We will not allow auger mining in conjunction with abandoned coal refuse remining operations. Accordingly, the performance standards of section (b)(9) would not be appropriate to abandoned coal refuse remining operations. Thus, we are not proposing regulations analogous to the auger mining provisions of section 515(b)(9).

(b)(10)—*Minimizing disturbance to the prevailing hydrologic balance.* Most of the performance standards of section

515(b)(10) of SMCRA are clearly appropriate to abandoned coal refuse remining operations. However, the requirement to restore recharge capacity is not appropriate for refuse remining operations, because these operations neither remove or replace overburden nor remove or disturb strata that serve as aquifers. Our proposed regulation would incorporate the requirements of sections 816.13 and 816.41 through 816.57, which implement section (b)(10). See our preamble discussion of the hydrologic balance standards in proposed sections 829.3, 829.13, and 829.41, 829.45, 829.46, and 829.49. We are also proposing to add at section 786.3 a definition for “Best Management Practices” (BMPs), and in section 786.15(b) we are proposing that the regulatory authority may authorize an applicant for a refuse removal permit to use BMPs. These BMPs provisions would provide that the regulatory authority may allow a removal operation to use a range of actions that have proved effective in other remining settings to prevent or mitigate water quality problems and to control sediment. These BMPs might be in addition to or in lieu of actions that are otherwise called for under applicable performance and reclamation standards. On this basis, our proposed regulation would provide the same level of environmental protection as under section 515(b)(10), adapted to the unique characteristics of abandoned coal refuse remining operations.

(b)(11), (13), (14), & (f)—*Disposing of coal waste.* In remining operations, these standards are appropriate only for the redeposition of coal refuse generated during on-site reprocessing operations or the sorting and sizing of refuse material handled during removal operations. Our proposed regulations at sections 829.3, 829.81, and 829.89 would incorporate the requirements of section 816.87 for burning and burned waste, most of the requirements of sections 816.81, 816.83, and 816.84 for coal mine waste, and the requirements of 816.89 for noncoal mine waste. These existing regulations implement sections 515(b)(11), (13), (14), & (f) of SMCRA. The proposed rule reflects the distinct differences between abandoned coal refuse remining operations and other surface coal mining operations. See the preamble discussion of the proposed coal waste regulations at sections 829.3, .81, and .89. On this basis, our proposed regulations would provide the same level of environmental protection as under sections 515(b)(11), (13), (14), & (f), adapted to the unique characteristics

of abandoned coal refuse remining operations.

(b)(12)—*Mining within five hundred feet from underground mines.* The performance standards of section (b)(12) are appropriate to abandoned coal refuse remining operations. Our proposed regulations at section 829.3 would incorporate by reference section 816.79, which implements these statutory standards. See the preamble discussion of the proposed general requirements regulation at section 829.3. On this basis, our proposed regulations would provide the same level of environmental protection as under section 515(b)(12).

(b)(15)—*Using explosives.* Abandoned coal refuse remining operations will rarely involve the use of explosives. Nonetheless, it is appropriate to require any use of explosives in abandoned coal refuse remining operations to comply with the performance standards of section 515(b)(15) of SMCRA. Our proposed regulations at section 829.3 would incorporate by reference sections 816.61 through 816.68, which implement the statutory standards. See the preamble discussion of the proposed general requirements regulation at section 829.3. On this basis, our proposed regulations would provide the same level of environmental protection as under section 515(b)(12).

(b)(16)—*Contemporaneous reclamation.* The performance standards of section 515(b)(16) of SMCRA are clearly appropriate to abandoned coal refuse remining operations, except for the variance for concurrent surface and underground mining activities. Coal refuse remining operations will not involve both surface and underground mining. Our proposed regulations would incorporate the language of section 816.100, which implements the statutory standards, without the variance cited above. Our proposed regulations would also contain the additional requirement of a reclamation schedule. See the preamble discussion of the proposed contemporaneous reclamation regulation at section 829.100. On this basis, our proposed regulations would provide the same level of environmental protection as under section 515(b)(16), adapted to the unique characteristics of abandoned coal refuse remining operations.

(b)(17) and (18)—*Access roads.* The performance standards of sections (b)(17) and (b)(18) are appropriate to abandoned coal refuse remining operations. Our proposed regulations would incorporate the language of sections 816.150 and .151, which implement the statutory standards. See the preamble discussion at section

829.3. On this basis, our proposed regulations would provide the same level of environmental protection as under sections 515(b)(17) and (b)(18).

(b)(19) and (20)—*Revegetation.* The performance standards of sections (b)(19) and (b)(20) are generally appropriate to abandoned coal refuse remining operations except for the requirement for diverse vegetation, which will not be attainable at almost all abandoned coal refuse sites because of the lack of topsoil. Nonetheless, at some abandoned coal refuse piles, vegetation has naturally reestablished itself to completely cover the site. Other sites have sparse vegetation consisting of a few annual weeds, and still others have remained completely barren for decades. Our proposed regulation at section 829.111 would require a vegetative cover sufficient to stabilize the land surface to prevent erosion regardless of the cover, or lack thereof, that existed prior to the abandoned coal refuse remining operation. At sites where some vegetative cover exists, our proposed regulation would require a final cover no less extensive than that existing prior to the redisturbance. Our proposed regulation would also adopt the revegetation timing and mulching requirements of sections 816.111(b)–(d), 816.113 and 816.114, and the revegetation success requirements of section 816.116(c)(1) through (4), which implement the major requirements of the statutory standards. See the preamble discussion of the proposed revegetation regulation at section 829.111. On this basis, our proposed regulation would provide the same level of environmental protection as under sections 515(b)(19) and (b)(20), adapted to the unique characteristics of abandoned coal refuse remining operations.

(b)(21)—*Protecting off-site areas.* The performance standards of section 515(b)(21) of SMCRA are appropriate to abandoned coal refuse remining operations. Our proposed regulations would apply, with some revision, the requirements of sections 816.81, 816.102, and 816.106, which implement the statutory standards. For the reasons set out in the preamble discussion of proposed section 829.102, the proposed rule would not apply the requirements of sections 816.104 and 816.105. In addition, our proposed regulations would assure the stability of the toe of the refuse pile, and thus provide protection equivalent to the relevant prohibitions of section 816.107, by not allowing remining operations on steep slopes to prematurely remove refuse from the toe of such piles. See the preamble discussion of the proposed

grading regulation at section 829.102 for a more detailed comparison with the existing rules implementing section 515(b)(21) of SMCRA. On this basis, our proposed regulations would provide the same level of environmental protection as under section 515(b)(21), adapted to the unique characteristics of abandoned coal refuse remining operations.

(b)(22)—*Spoil disposal.* Abandoned coal refuse remining operations will not create spoil. Therefore, the performance standards of section (b)(22) are not appropriate to abandoned coal refuse remining operations. Thus, we are not proposing regulations to implement the spoil disposal provisions of section 515(b)(22).

(b)(23)—*Other criteria necessary to achieve reclamation.* This general section is appropriate for abandoned coal refuse remining operations, and our proposed regulations contain other requirements, discussed above, that address conditions encountered at abandoned coal refuse sites. On this basis, our proposed regulations would provide the same level of environmental protection as under section 515(b)(23), adapted to the unique characteristics of abandoned coal refuse remining operations.

(b)(24)—*Fish and wildlife protection.* The performance standards of section (b)(24) are appropriate to abandoned coal refuse remining operations. Our proposed regulations would incorporate by reference section 816.97, which implements the statutory standards. In addition, we are proposing a change that would add a definition of BMPs and allow their use in combating water quality and sediment problems at abandoned coal refuse sites. Protection of water quality is important in protecting fish and wildlife, because of the importance of water quality for fish and wildlife and their habitats. See the preamble discussion of the proposed general requirements regulation at section 829.3, which incorporates by reference existing regulations at section 816.97. See also preamble discussion of proposed definition of “BMPs” at new section 786.3. On this basis, our proposed regulations would provide the same level of environmental protection as under section 515(b)(24), adapted to the unique characteristics of abandoned coal refuse remining operations.

(b)(25)—*Providing an undisturbed natural barrier.* These provisions, which address mining coal from its original geologic location, are not appropriate for abandoned coal refuse remining operations because abandoned coal refuse remining operations will not mine coal in its original geologic location. Further, an undisturbed

natural barrier typically does not exist around coal refuse piles. Thus, we are not proposing regulations to implement the natural barrier provisions of section 515(b)(25).

(c)—*Mountaintop removal mining.* These provisions, which address mining coal from its original geologic location, are not appropriate for abandoned coal refuse remining operations because abandoned coal refuse remining operations will not mine coal in its original geologic location. Thus, we are not proposing regulations to implement the mountaintop removal provisions of section 515(c).

(d)—*Steep slope mining.* These provisions, which address mining coal from its original geologic location, are not appropriate for abandoned coal refuse remining operations because abandoned coal refuse remining operations will not mine coal in its original geologic location. Our proposed regulations would, however, add specific requirements for abandoned coal refuse remining operations and regrading on steep slopes. See the preamble discussion of the proposed grading regulation at section 829.102. On this basis, our proposed regulations would provide for a higher level of environmental protection than that provided under section 515(d), adapted to the unique characteristics of abandoned coal refuse remining operations.

(e)—*Postmining land use variances.* As explained above in the discussion of section 515(b)(2), the land use that existed prior to mining is commonly not known, or is not attainable because of limitations in material at the abandoned refuse site either before or after remining operations are completed. Our proposed regulation at section 829.133 would require that the operator restore the land to a condition capable of supporting uses that are the same as or higher or better than the land use prior to commencement of the abandoned coal refuse remining operation. See the preamble discussion of the proposed postmining land use regulation at section 829.133. On this basis, our regulation would provide the same level of environmental protection as under section 515(e), adapted to the unique characteristics of abandoned coal refuse remining operations.

Section 516 of SMCRA—Performance Standards for Underground Mining Operations

(b)(1) and (c)—*Preventing subsidence damage.* This provision is not appropriate for abandoned coal refuse remining operations. These operations

do not involve underground mining and do not cause subsidence.

(b)(2) and (3)—*Seal portals and other openings.* Because abandoned coal refuse remining operations may uncover or otherwise encounter mine openings or drill holes, this section has limited applicability to such operations. Our proposal would incorporate with limited modifications sections 817.13 through 817.15, which implement this statutory requirement. See the preamble discussion of the proposed casing and sealing regulation at section 829.13. On this basis, our regulation would provide the same level of environmental protection as under section 516(b)(2) and (3), adapted to the unique characteristics of abandoned coal refuse remining operations.

(b)(4) and (5)—*Mine waste.* See earlier discussion for sections 515(b)(11) and (13).

(b)(6)—*Revegetation.* See earlier discussion for section 515(b)(19).

(b)(7)—*Protecting off-site areas.* See earlier discussion for section 515(b)(21).

(b)(8)—*Fire hazards.* See earlier discussion for section 515(b)(14).

(b)(9)—*Hydrologic balance.* See earlier discussion for section 515(b)(10).

(b)(10)—*Access roads, etc.* See earlier discussion for section 515(b)(17).

(b)(11)—*Fish and wildlife.* See earlier discussion for section 515(b)(24).

(b)(12)—*Locating new drift mine portals to prevent gravity discharges.*

This section is not appropriate for abandoned coal refuse remining operations. These operations do not construct drift mine portals, and thus do not cause gravity discharges from those portals.

B. Special Permit System for Abandoned Coal Refuse Remining Operations

The EPCA authorizes the development of separate permit systems for abandoned coal refuse remining operations based on the distinct differences between such operations and other surface coal mining operations. Within this framework, proposed part 786, Requirements for Permits for Abandoned Coal Refuse Remining Operations, would specify permit information requirements for coal refuse removal and coal refuse on-site reprocessing operations. The proposed part would include changes to some of the permit information requirements at part 779, Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources, and part 780, Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan. In the

next section of this discussion, we discuss the reasons we are proposing a single permit system at part 786 for both refuse removal and on-site reprocessing operations; the provisions of proposed part 786; and our rationale for any differences between the provisions of proposed part 786 and those of parts 779 and 780.

C. Proposed Regulations

The regulatory provisions proposed in this rulemaking are intended to implement the requirements of section 2503(e) of the EPCA, codified at 30 U.S.C. 1251a. The proposed regulations include (1) A new definition in section 701.5 of “abandoned coal refuse remining operations,” distinguishing between those operations that reprocess the abandoned coal refuse on-site and those operations that remove the refuse; (2) a new definition in section 786.3 of “BMPs” as activities and practices that can be used with abandoned coal refuse remining operations to prevent or reduce chemical or sediment pollution to surface and ground water; (3) a new part 786 that would specify the permit information requirements for individual abandoned coal refuse remining operations; and (4) a new part 829 that would establish the performance standards appropriate to abandoned coal refuse remining operations permitted under part 786.

The proposed permit information requirements in part 786 parallel the existing surface coal mining permit information requirements in parts 779 and 780. The proposed permit information required in proposed part 786 will enable the regulatory authority to determine whether the applicant can comply with the performance standards proposed in part 829. The proposed performance standards in part 829 are, in turn, based on the surface coal mining performance standards in parts 816 and 817.

The proposed regulations in parts 786 and 829 apply to coal refuse remining operations conducted at an abandoned coal refuse site. They do not apply to the off-site reprocessing of abandoned coal refuse already regulated under section 785.21 and part 827, Coal Preparation Plants not Located Within the Permit Area of a Mine.

During the development of the proposed regulations, we considered the appropriateness of developing separate sets of permitting requirements for abandoned coal refuse removal and for on-site reprocessing operations. However, our consideration of this issue did not identify sufficient differences between the requirements applicable to removal and on-site reprocessing

operations to warrant separate sets of requirements for these two types of refuse operations. Therefore, the proposed regulations provide for the issuance of “abandoned coal refuse remining operations” permits that may include either refuse removal or on-site reprocessing operations, or both.

For the most part, the proposed permitting regulations in part 786 and the proposed performance standards in part 829 apply equally to both refuse removal and on-site reprocessing operations. However, some of the requirements in each part have been designed specifically for either removal or on-site reprocessing operations. For example, the proposed part 786 ground-water baseline requirements for refuse removal operations are different from those for reprocessing operations. For permits that include both removal and on-site reprocessing operations, the baseline requirements for the removal portion of the operation must be satisfied for the removal area and the area adjacent to it. Similarly, the baseline requirement for the on-site reprocessing portion of the operation must be satisfied for both the area containing the on-site reprocessing support facilities, such as the processing equipment, ponds, and reprocessing waste structures, as well as the adjacent area. Where an area adjacent to an on-site reprocessing operation overlaps the removal portion of the permit, or its adjacent area, the reprocessing baseline requirements apply to the overlap area. In these cases, both the reprocessing areas and removal areas would be covered under one permit.

Section 701.5 Definitions

Abandoned Coal Refuse Remining Operations

We propose to add a definition of “abandoned coal refuse remining operations” that identifies the refuse sites that are eligible for mining under the regulations proposed in part 786 and part 829 as those lands that would otherwise be eligible for expenditure under sections 404 and 402(g)(4) of SMCRA. The proposed definition then describes the principal characteristics of abandoned coal refuse reprocessing operations and removal operations, which are the two types of remining operations identified in the EPermit. Finally, the definition states that the term “abandoned coal refuse remining operations” does not encompass the removal of refuse for non-fuel uses.

Section 2503(e) of the EPermit, 30 U.S.C. 1251a, directs the Secretary of the Interior by regulation to establish environmental protection performance

and reclamation standards, and separate permit systems for two types of operations: (1) Those that reprocess abandoned coal refuse on-site (reprocessing operations) and (2) those that remove abandoned coal refuse from the site (removal operations). The statute further specifies that these regulations and separate permit systems will apply to such operations on “lands that would otherwise be eligible for expenditure under section 404 and section 402(g)(4) of [SMCRA].” The lands referred to are ones that are eligible for expenditure from the AML fund established under Title IV of SMCRA; *i.e.*, lands that were mined for coal or were affected by such mining and abandoned or left in an inadequate reclamation status prior to enactment of SMCRA and for which there is no continuing reclamation responsibility under State or other Federal laws.

Although the EPermit refers to the two types of operations, it does not explain how they differ. Accordingly, we have characterized “reprocessing operations” and “removal operations” in terms of the various activities typically associated with each type of operation.

For purposes of this rulemaking, the principal characteristic of “reprocessing operations” is the use of specific gravity or floatation methods to separate coal from waste material. These methods require the liberal use of water or other liquids to effect the separation of coal from waste material. The resultant discharge from a reprocessing operation will commonly be more acid (and possibly toxic) than the discharge expected from a removal operation. While the reprocessing of coal refuse leads to a significantly higher Btu in the refuse product, the residual coal content of refuse waste, although low, will vary depending on the separation mediums used. This waste, usually redeposited on site, will represent a large percentage of the original refuse that has just been processed. In addition, the redeposited waste will usually consist of an acidic mixture of fine-grained materials with high moisture content. As a result, the redeposited waste materials will often have altered particle cohesion and/or reduced shear strength that can tend towards slope instability.

Reprocessing operations also typically employ some form of on-site mechanical sorting or sizing prior to the liquid processing of refuse material. These sorting and sizing activities often involve the use of vibrating screens to eliminate larger non-coal objects such as tree limbs, rocks, machinery, etc., and then the use of crushers to reduce the refuse product to a size appropriate for the liquid processor. For purposes of

this rulemaking, the proposed description of reprocessing includes any on-site sorting and sizing activities.

The principal characteristic of “removal operations” is the activity of removing coal refuse from the site. As with reprocessing operations, the proposed description of removal operations includes any on-site mechanical sorting and sizing of refuse material to eliminate larger non-coal objects.

There are indirect environmental benefits associated with the on-site sorting and sizing of refuse at both reprocessing and removal operations. The waste product of sorting and sizing, which is invariably left on site, is mostly noncoal. Our proposed regulations would require that this waste material be placed in a stable configuration that would almost always be more environmentally secure than the abandoned refuse site was before remining. We also believe that the environmental impacts of controlled redeposition and reclamation of refuse that has been sorted or sized out would be preferable to the impacts that would result if operators simply mined around portions of a refuse pile and left those portions unreclaimed.

In almost all cases, the liquid discharge and solid waste of on-site reprocessing operations have a higher potential for causing negative ground- and surface-water impacts and unstable slopes than would any of the activities associated with removal operations. This difference in potential for environmental harm is because removal operations, unlike reprocessing operations, neither introduce a new liquid discharge to the site nor redeposit on site a large volume of recently processed waste. Based on these important differences between the two types of operations, the proposed regulations would, for on-site refuse reprocessing operations, require additional permit information and more stringent performance standards concerning stability and hydrology than those required for removal operations.

Our proposed definition of “abandoned coal refuse remining operations” specifically excludes the removal of refuse for non-fuel uses. Activities such as the removal of refuse cinder (red dog) for road base or surfacing, the use of refuse for fill material, or for backstowing of underground mine works to prevent subsidence have never been regulated as surface coal mining operations nor would they be under the proposed regulations.

Part 786—Requirements for Permits for Abandoned Coal Refuse Remining Operations

Proposed part 786 specifies the minimum permit information that would be required for abandoned coal refuse remining operations, including information on (1) environmental resources that might be impacted or affected, and (2) mining operations and reclamation plans.

Section 786.1 Scope

In this section we explain that the purpose of part 786 is to set forth the requirements for obtaining a permit for abandoned coal refuse remining operations. We also explain the use of the pronouns “we”, “our”, and “us” that refer to the regulatory authority and the pronouns “you” and “your” that refer to the applicant and operator. We use these pronouns throughout this part in order to make the regulations more readable.

Section 786.2 Objectives

In this section we explain that our objective is to ensure that the permit applicant obtains a permit to conduct abandoned coal refuse remining operations in accordance with the requirements of SMCRA, as amended by the EPAAct.

Section 786.3 Definitions

Best Management Practices (BMPs)

We are proposing to add a definition of BMPs at proposed section 786.3. The definition would be used solely for the purpose of abandoned coal refuse remining operations, and would include any number of activities, operating and maintenance procedures, practices, or prohibition of practices that have as their goal preventing or reducing chemical pollution to surface and ground water and controlling excessive sediment concentrations to surface water. EPA defines BMPs in a similar manner at 40 CFR 122.2, and in EPA's December, 2001, publication “Coal Remining—Best Management Practices Guidance Manual.” (EPA publication 821-B-01-010).

Our objective in allowing the use of BMPs with abandoned coal refuse remining operations is to broaden the tools, subject to regulatory authority approval, available for controlling sediment and AMD at these sites. The proposed use of BMPs with abandoned coal refuse remining operations has substantial basis: (1) The EPA publication cited above, which acknowledges the importance of using BMPs to address acid mine drainage problems associated with coal mining

activities, presents information on hydrologic, geochemical and sediment control BMPs, efficiencies of the BMPs, and costs for installing specific BMPs; (2) BMPs is a term that now, within the mining industry, has a widespread history and acceptance, finding application in the reduction and/or prevention of chemical pollution to surface and ground water with particular emphasis on AMD, a phenomenon commonly associated with abandoned coal refuse operations; and (3) BMPs have been developed and used in many commercial and industrial applications to control runoff and reduce sedimentation as well as to minimize erosion and sedimentation during silviculture operations. These applications of BMPs have direct transferability to mining activities where erosion and sedimentation are also a concern. For these reasons, we believe our proposed reliance on BMPs will similarly prove to be both economical for operators and environmentally effective in dealing with existing or potential environmental problems, as thoroughly documented in the above referenced EPA publication.

Our proposed use of BMPs as approved sediment control measures is subject to an important condition. Our 1983 rulemaking at § 816.46(b)(2) required that all surface drainage from a disturbed area be passed through a “siltation structure,” which by definition at section 701.5 includes a sedimentation pond, a series of sedimentation ponds, or other treatment facilities. This requirement of § 816.46(b)(2) for siltation structures was adopted to implement the mandate of sections 515(b)(10)(B) and 516(b)(9)(B) of SMCRA to use the best technology currently available (BTCA) to prevent additional contributions of suspended solids outside of the permit area. However, in response to the successful challenge of § 816.46(b)(2), we suspended the siltation structure requirement (51 FR 41961; November 20, 1986). As a result of that suspension, RAs had to determine on a case-by-case basis whether siltation structures or other sediment control measures would constitute BTCA. Under our proposed regulations, for those BMPs that would constitute sediment control measures, RAs will similarly have to determine whether the specific proposed BMP or combination of BMPs would constitute BTCA.

Section 786.10 Information Collection

Proposed § 786.10 contains information on the Office of Management and Budget's approval of the information collection requirements

of part 786. Part 786 sets forth the requirements for obtaining a permit for abandoned coal refuse remining operations. The requirements ensure that the permit applicant obtains a permit to conduct an abandoned coal refuse remining operation in accordance with the requirements of SMCRA, as amended by the EPAAct. We estimate that there will be 16 new applicants per year and that each of the applicants will require approximately 469 hours and \$4,848 in non-wage costs to complete the information required by part 786. In addition, the 15 regulatory authorities will require approximately 230 hours with no additional non-wage costs to complete the information required by part 786.

Section 786.11 General Requirements

Proposed § 786.11 provides that permits for abandoned coal refuse remining operations would be required to comply with the requirements of proposed part 786 and would be required to demonstrate that the operations will be conducted in compliance with the performance standards of proposed part 829. This section makes clear that the permit application requirements of parts 779, 780, 783, and 784 would not apply directly to abandoned coal refuse remining operations, but rather would apply only to the extent individual provisions are incorporated by reference or adapted by part 786.

Section 786.12 Information on Environmental Resources

Proposed § 786.12(a) addresses general and climatological information requirements. This paragraph would apply the requirements of §§ 779.11, 779.12, and 779.18.

Proposed § 786.12(b) addresses pre-remining vegetation information requirements. This paragraph specifies the requirements that would apply to coal refuse remining, instead of the requirements of § 779.19. The paragraph would require photographs and a narrative description of the typical vegetative cover at the refuse site. The photographs and narrative would have to be of sufficient detail to allow an estimate of vegetative ground cover and species diversity. Because most abandoned coal refuse sites have sparse vegetation and the vegetation found is usually volunteer and does not represent the original species diversity, we believe the proposed requirements are more suitable for abandoned coal refuse sites than the detailed vegetation mapping requirements of § 779.19. Furthermore, we believe that to prescribe precise measurements of

vegetative cover and species diversity would be inappropriate for abandoned coal refuse sites because of the poor surface conditions found at most sites. The proposed requirements for photographs and narrative would ensure that the application adequately describes the pre-remining surface cover and would serve as a reference point for required reclamation.

Proposed § 786.12(c) addresses requirements for information on soil resources and other vegetation-support material and specifies the requirements that would apply to coal refuse remining instead of the requirements of § 779.21. This paragraph would require that the permit contain sufficient information on the soil or other vegetation-support material to enable us to determine if revegetation of the site can be achieved as required by the revegetation performance standards at § 829.111. We believe that the proposed regulation is more appropriate for abandoned coal refuse remining operations than § 779.21 which requires a soil map and other detailed quantitative soil information. As noted previously, abandoned coal refuse sites, unlike areas covered by the great majority of surface mining permits, do not have topsoil and usually have minimal vegetative cover. The information on soil resources and vegetation support proposed in this paragraph and in § 786.12(b) should provide ample information to assess the site revegetation potential.

Proposed § 786.12(d) would require the application to include the mapping information in § 779.24, except as follows:

1. Instead of the requirement in § 779.24(d) that maps show structures within 1000 feet of the operation, the proposed paragraph would require that maps show structures within 300 feet of the operation if blasting is not planned. The proposed 300-foot requirement corresponds to the 300-foot prohibition against mining contained in section 522(e) of SMCRA and § 761.11. Proposed section 786.12(d) would apply the 1000-foot map requirement in § 779.24(d) for operations that are expected to conduct blasting. The coverage to 1000 feet is appropriate for the evaluation of the anticipated blast design required by proposed § 786.13(c). Proposed section 786.12(d) would allow the map showing the additional coverage, *i.e.*, the structures in the area between 300 and 1000 feet, to be submitted with the anticipated blast design after permit issuance but prior to blasting's being conducted at the site. This provision for design submission is included because of the possibility that

the need for blasting may not have been anticipated at the time that the permit application was prepared.

2. Proposed § 786.12(d) does not include the requirement in § 779.24(f) that maps show proposed reference area boundaries for determining the success of revegetation. This requirement is not included in proposed § 786.12(d) because the proposed revegetation performance standards at § 829.111 would not require reference areas.

Proposed § 786.12(e) addresses cross sections, maps, and plans and would retain the requirements of § 779.25 except as follows:

1. Proposed § 786.12(e) would not apply the requirement of § 779.25(a)(3) that cross sections, maps, and plans show the coal and overburden strata. This requirement is not appropriate for abandoned coal refuse remining operations because such operations will not remove overburden strata or coal seams. Instead, the proposed regulation would require cross-sections illustrating the refuse site if the site is located on a steep slope (as defined at § 701.5). Requiring these cross sections only for steep slopes is consistent with the steep slope backfilling and grading requirements proposed at section 829.102 for abandoned coal refuse operations.

2. Proposed § 786.12(e) would not apply the requirement in § 779.25(a)(4) that maps show all coal crop lines and the "strike and dip," *i.e.*, the direction and slant, of the coal to be mined. Because abandoned coal refuse remining operations will not mine coal seams, this requirement is not appropriate. Instead, the proposed regulation would require maps to show all coal outcrops within the permit area together with their strike and dip. This latter information is needed because coal seams may outcrop within the refuse area and affect ground-water movement.

3. Proposed § 786.12(e) would not apply the requirements in § 779.25(a)(6) for information on the location and extent of subsurface water, if encountered. Since abandoned coal refuse remining operations will only remove or reprocess refuse that has been relocated from other areas and will neither remove nor disturb strata that serve as aquifers for subsurface water, we do not believe that information as to the location and extent of subsurface water is necessary. However, the proposed regulation does apply the requirement in § 779.25(a)(7) that maps show surface water bodies including springs (seeps). We believe that the information on springs will provide appropriate information related to

potential ground-water flow systems, if such information is needed.

Section 786.13 Information on Operation Plans

Proposed § 786.13 specifies the information that would be required in the operations plan. The following paragraphs discuss these requirements in detail.

Proposed § 786.13(a) concerning general requirements would apply the requirements of § 780.11 that are appropriate to abandoned coal refuse operations. The proposed paragraphs would require a description of the removal and on-site reprocessing activities to be conducted under the abandoned coal refuse remining permit as well as a description of associated equipment and facilities. Because the proposed requirements of § 786.13(a) would apply solely to "abandoned coal refuse remining operations," as that term would be defined in section 701.5, the extraction of coal by auger, surface, and underground methods would not be authorized under permits for abandoned coal refuse remining operations.

Proposed § 786.13(b) concerning existing structures would apply the requirements of § 780.12. We believe that the requirements at § 780.12 should generally apply to permit applications for abandoned coal refuse remining operations. The proposed paragraph would require that the narrative identify whether structures are associated with removal or reprocessing operations.

Proposed § 786.13(c) concerning blasting would require a blasting plan in accordance with the regulations at § 780.13, whenever blasting is planned during the abandoned coal refuse remining operation.

Proposed § 786.13(d) concerning maps and plans would apply the requirements of section 780.14 except as follows:

1. Proposed section 786.13(d)(1) would apply the maps and plans requirements of section 780.14(a), except that, in lieu of the requirements of §§ 779.24 and 779.25 referenced in § 780.14(a), the requirements of § 786.12(d) and (e) would apply.

2. Proposed §§ 786.13 (d)(1) and (2) contain requirements almost identical to those of § 780.14(b)(4) and (5) except that the proposed regulation reflects the fact that coal refuse would be utilized; that coal or refuse may be the usable product; that new "spoil," as defined in § 701.5, would not be generated; and that vegetation-support material, rather than topsoil, would be used to reclaim the sites. Proposed paragraph (2)(ii) would also provide that the required maps and plans show the storage areas

for vegetative support material, "rock waste" (e.g., road cut material), and combustible and noncombustible noncoal waste. This latter requirement corresponds to the proposed provision of § 829.89 that would allow disposal of noncombustible noncoal waste within refuse disposal areas. Proposed paragraph (2)(iii) would apply the requirements of § 780.14(b)(11) except for the requirement to show the location of excess spoil areas. The reference to excess spoil areas would not apply, because spoil will not be generated by abandoned coal refuse remining operations.

Proposed § 786.13(e) concerning requirements for an air pollution control plan would apply the requirements of § 780.15 except that, in lieu of the requirements of § 816.95 referenced in § 780.15, the requirements of § 829.95 would apply.

Proposed § 786.13(f) concerning fish and wildlife information would retain the requirements of § 780.16.

Proposed § 786.13(g) concerning protection of public parks and historic places would apply the requirements of § 780.31.

Section 786.14 Information on Reclamation Plans

Proposed § 786.14 would establish the information that is required on plans for reclamation. The following paragraphs discuss these requirements in detail.

Proposed § 786.14(a) essentially would apply the general requirements of § 780.18 except that, in lieu of the requirements of part 816 referenced in section 780.18, the corresponding requirements of part 829 would apply. The proposed regulation would not require the same detail and specificity that is required by the existing regulations regarding revegetation information. Rather, the proposed regulation would require that the application include a plan for revegetation as required by proposed § 829.111. We believe this requirement would provide us more than adequate information to assess the proposed revegetation plan.

Proposed § 786.14(b) essentially would apply the requirements of section 780.23 concerning postmining land use, except those related to existing land capability and productivity and those related to the information needed to propose a postmining land use different from the premining land use. For the reasons discussed above in the evaluation of each performance standard in sections 515 and 516 of SMCRA, detailed information on existing land capability, productivity, production, and land use is

inappropriate to coal refuse remining operations. Proposed § 786.14(b) would, however, require a written description and photographs of existing land uses. The written description and photographs would describe and document both the existing land use and the location of any abandoned equipment and other noncoal mine waste left at the site. The proposed regulation would further require a detailed description of the proposed postmining land use and how it will be achieved. The proposed regulation would not apply the requirement of § 780.23(a) for a discussion of alternative land uses. Because the configuration of the abandoned refuse area before remining may not readily lend itself to a variety of postmining land uses after remining, we do not believe it is appropriate to require the permittee to expend the resources to identify such alternative uses. The proposed regulation would require that the plan be accompanied by any comments from the surface owner or State or local land use agencies that would have to initiate, implement, approve, or authorize the proposed land use. We believe this process would adequately identify any viable land use alternatives that exist.

Proposed § 786.14(c) would apply the requirements of § 780.25 for ponds, impoundments, banks, dams, and embankments. Therefore, to the extent such structures are included in the reclamation plan, they would be described in accordance with this section.

Proposed § 786.14(d) would apply the requirements of § 780.27 for mining near underground mines.

Proposed § 786.14(e) would apply the requirements of § 780.29 for diversions.

Section 786.15 Information on Hydrology

Section 786.15 would specify the information that is required on hydrology. The following paragraphs discuss those requirements in detail.

Section 786.15(a) Reprocessing Operations

Proposed § 786.15(a)(1) would apply the requirements of § 780.21 for the following types of information: Sampling and Analysis methodology, section 780.21(a); baseline hydrologic information, § 780.21(b); baseline information for the cumulative impact area, § 780.21(c); modeling, § 780.21(d); alternative water sources, § 780.21(e); probable hydrologic consequences determinations, section 780.21(f); cumulative hydrologic impact assessments, § 780.21(g); ground-water

monitoring plans, section 780.21(i); and surface-water monitoring plans, § 780.21(j).

In addition, the requirements of § 780.21(h) pertaining to the hydrologic reclamation plan would be applied under proposed § 786.15(a)(2), with the exception of the requirement to restore approximate premining recharge capacity. Section 816.41(b)(2) does not require restoration of recharge capacity in coal mine waste disposal areas and fills. We believe that the restoration of recharge capacity is also not appropriate for areas affected by abandoned coal refuse remining operations.

Section 786.15(b) Removal Operations

This proposed section would apply, with appropriate adaptations, the major requirements for hydrologic information and analysis of the regulations at § 780.21 regarding: (1) The probable hydrologic consequences (PHC) determination required by section 780.21(f); (2) the cumulative hydrologic impact assessment (CHIA) required by § 780.21(g); and (3) the hydrologic reclamation plan (HRP) required by § 780.21(h). In addition, this proposed section would require the identification of BMPs that are proposed to either mitigate hydrologic impacts or create hydrologic enhancements.

The proposed rule also would apply, with appropriate adaptations, the other supporting requirements of § 780.21, including hydrologic information and analysis regarding sampling and analysis methodology, § 780.21(a); baseline information including supplemental information, § 780.21(b); baseline cumulative impact area information, § 780.21(c); modeling, § 780.21(d); alternative water source information, § 780.21(e); ground-water monitoring plans, section 780.21(i); and surface-water monitoring plans, § 780.21(j).

As background on the hydrologic information and analysis required by the existing permit regulations, we would like to summarize how the PHC, HRP, and CHIA relate to each other. The purpose of the PHC is to identify impacts on the hydrologic balance and the purpose of the HRP is to identify mitigation measures that would reduce adverse impacts on that balance. The PHC and HRP are provided by the operator in the permit application. The purpose of the CHIA, which is in part based on the PHC, is to determine the cumulative hydrologic effects in a specified watershed from the proposed mining operation together with all other anticipated mining operations in that watershed. The CHIA is prepared by the regulatory authority for an area that

includes the proposed permit area and is used in evaluating whether the operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

With regard to the requirements for hydrologic information and analysis, our proposed regulations would differ from the above-referenced regulations in four principal ways. Our proposed regulations would (1) Provide for a narrative PHC and encourage the use of available data, including that required by a National Pollutant Discharge Elimination System (NPDES) permit, to satisfy baseline requirements for seasonal flow conditions; (2) require the PHC to estimate improvements and/or enhancements as well as negative impacts to the hydrologic balance caused by the operator; (3) require surface and ground-water monitoring plans (and associated monitoring data collected during the abandoned coal refuse remining operation) only in cases where the PHC estimates negative impacts to the hydrology; and (4) require the HRP to identify the BMPs that will be proposed for use during the operation. These four differences are discussed in more detail below.

The first way our proposed regulation differs from the existing regulation on hydrology is that our proposed regulation at § 786.15(b)(1)(iii) would initially allow for a narrative PHC, including its requirement for baseline information on seasonal variations, to be based on available data, as opposed to the current requirements for a PHC based on site-specific data. We believe that for most coal refuse sites sufficient hydrologic information and data already exist to satisfy the PHC requirements for baseline information. Thus, our proposed regulation provides that a narrative PHC can be based on existing hydrologic information derived from (1) Modeling and other techniques; (2) data and findings for the proposed site including relevant hydrologic information that might have been previously required to obtain a point-source discharge permit under the NPDES program; or (3) other relevant remining operations. The proposed PHC would summarize probable hydrologic impacts or enhancements while providing support, generally in terms of available information and data, for any conclusions drawn. A PHC that contains an unsupported description of seasonal baseline variations or unsupported conclusions of probable hydrologic impacts or enhancements would not be acceptable.

When additional information or data are needed to support the PHC, we can request this information or data from the

applicant pursuant to proposed § 786.15(b)(1)(v), which allows us to request supplemental information if adverse impacts are identified in the PHC, and proposed § 786.15(b)(3), which allows us to require any additional information (including site-specific hydrologic data) needed to ensure that the permit applicant will be able to comply with the performance standards of proposed part 829. Thus, whatever the initial level of hydrologic information and data submitted in the permit application, we have ample authority under the proposed regulations to request any additional information or data that is necessary to assess the applicant's conclusions as to probable hydrologic consequences.

The second way our proposed regulations would differ from existing regulations is that our proposed regulation at § 786.15(b)(1)(iv) would require in the PHC a description of the enhancement to local ground- and surface-water hydrology expected from the proposed coal refuse remining operation, with particular emphasis on decreased loads of pollutants achievable through improved water quality, decreased flow or infiltration of water, or some combination thereof.

The third way our proposed regulations would differ from the existing regulations is that our proposed regulations would not routinely require the operator either to develop monitoring plans for surface and ground water or to monitor surface and ground water during the abandoned coal refuse remining operation. The rationale for this approach and the conditions under which supplemental monitoring plans and monitoring data would be required are discussed below.

The major difference between abandoned coal refuse remining operations and other surface mining operations, with regard to the need for monitoring, is alluded to in section 517(b)(2) of SMCRA. That section requires monitoring of operations that disturb rock strata serving as aquifers that significantly ensure the hydrologic balance of water use. However, as previously noted, abandoned coal refuse remining operations will remove or reprocess only materials that have been relocated from other areas and placed on a refuse site. These operations will not disturb any strata that serve as aquifers, and thus the monitoring requirements of section 517(b)(2) should not apply.

Our proposed regulations would not routinely require monitoring plans (and associated monitoring data) for surface water and ground water. If, however, the PHC indicates probable adverse impacts

to the hydrologic balance, then proposed § 786.15(b)(1)(v) would require compliance with the supplemental information requirements of § 780.21(b)(3) and the ground- and surface-water monitoring requirements of § 780.21(i) and (j). In this way, full monitoring would be assured whenever probable adverse hydrologic consequences are identified in the PHC.

The fourth way our proposed regulations differ from existing regulations is that proposed § 786.15(b)(3) would require that the HRP identify the specific BMPs to be used and any additional information we might require to ensure compliance with the performance standards of part 829. This requirement recognizes that the SMCRA regulatory authority always has the inherent authority to require additional information, including information pertaining to BMPs, if that information is needed to make a decision on a permit application.

In summary, we believe the approach that we have taken in our proposal with respect to baseline information, PHC and HRP requirements, and BMPs is reasonable and, at the same time, technically sound. Our belief is buttressed by the fact that the ground water and surface water at abandoned coal refuse sites are most often already adversely impacted. Abandoned coal refuse removal operations, therefore, could be reasonably expected to maintain or improve the existing hydrologic balance rather than adversely affect it, as indicated by statistical evidence presented below in summaries of data from the Pennsylvania regulatory program. Thus, our proposed regulations, which are intended to facilitate the remining of abandoned coal refuse piles and provide the same level of environmental protection as under sections 515 and 516 of SMCRA, reasonably could be expected to maintain or improve the hydrologic balance of abandoned coal refuse sites.

As noted, Pennsylvania has been a leader in promoting remining and in documenting the positive environmental effects of remining operations, and has a hydrologic remining data base that goes back to 1985. See Environmental Protection Agency, 2001, Coal Remining—Best Management Practices Guidance Manual, EPA-821-B-01-010, pp. 16–18. This EPA manual reports that, of 260 remining permits issued by Pennsylvania through 1997, 98 percent resulted in pollutional loads that were either lower than baseline or only slightly exceeded baseline and did not require long-term treatment.

Pennsylvania’s database through 2003 contains hydrologic information on a total of over 300 remining operations. The two figures presented below are derived from information in that database for reclaimed sites and detail the environmental enhancements that can reasonably be expected from similar remining operations. According to staff of the Pennsylvania Department of Environmental Resources (personal communication with our staff, 2003),

the figures and the database from which these figures were prepared consist of remining sites permitted in Pennsylvania under the alternative effluent provisions of section 301(p) of the Clean Water Act, 33 U.S.C. 1311(p), popularly referred to as the “Rahall amendment of 1987.” The sites represent all types of remining categories including coal refuse operations covered by our proposed regulations.

One hundred of the sites, having about 230 acid discharges prior to the remining, have been fully reclaimed. Figure 1 shows that most of these 230 discharges were either eliminated, improved, or at least did not worsen with respect to acidity, iron and manganese (Mn) loads. Figure 2, which is a composite of the 230 discharges, shows a significant aggregate reduction in acid and sulfate loads after remining.

FIGURE 1

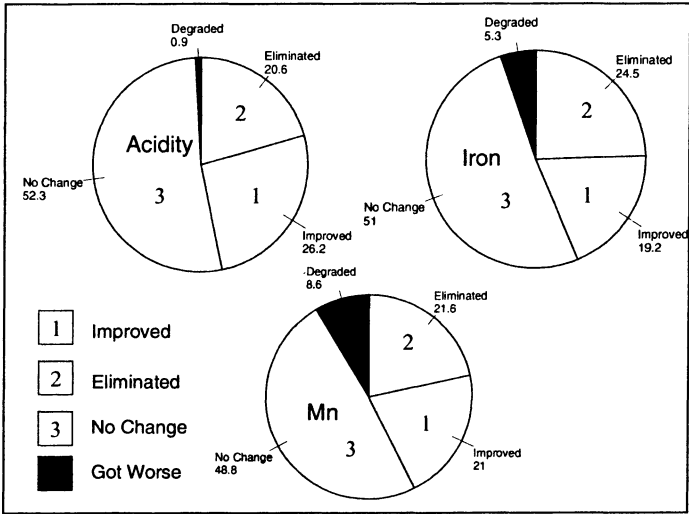
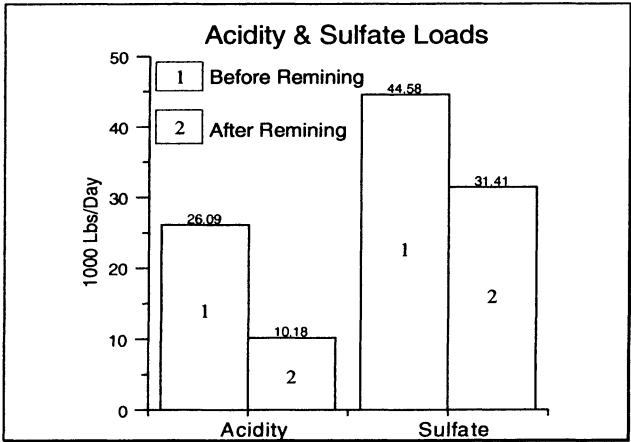


FIGURE 2



Section 786.16 *Geologic and Refuse Information*

Proposed § 786.16(a) would apply the requirements of sections 780.22(a)(1) and (3) that the permit application provide sufficient geologic data, if appropriate, and refuse data in sufficient detail to assist in 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; whether the operation has been designed to prevent material damage to the hydrologic balance outside the permit area, and whether reclamation can be accomplished. The “if appropriate” caveat, which is not in the existing rule language, is included in the proposed language to expressly recognize that geologic data may not always be needed or helpful for coal refuse sites. The existing rule language does not require the submission of refuse data, but such information is clearly needed under the proposed rule. Proposed § 786.16(b) also would include the requirement of § 780.22(c) that authorizes us to request additional geologic and refuse data if deemed necessary to protect the hydrologic balance or meet the performance standards of this chapter. Section 780.22(c) does not require the submission of refuse data, but such information would be required under the proposed rule.

The proposed regulation would not apply the requirement of § 780.22(a)(2) for identifying all potentially acid- or toxic-forming strata. We do not believe it appropriate to retain this requirement because refuse piles are, by their very nature, potentially acid- or toxic-forming; they are not homogenous and would, therefore, require extensive sampling in order to accurately map their chemical variations. Furthermore, the previously noted Pennsylvania study would strongly suggest that this identification is not needed because abandoned coal refuse remining operations, particularly removal operations, would be expected to maintain or improve site conditions.

The proposed regulation also does not retain the requirements of § 780.22(b) to provide a description of the geology down to the strata below the coal seam to be mined, or down to any aquifer below the coal seam to be mined that could be adversely impacted by mining. These requirements are not appropriate because abandoned coal refuse remining operations will not disturb or mine any strata, including “coal seams.”

Section 786.17 *Information on Roads, Support Facilities*

Proposed § 786.17 retains the requirements of §§ 780.33 and 780.37 for roads, and the requirements of § 780.38 for support facilities.

Disposal of Excess Spoil

We have not proposed a counterpart in section 786 to the requirements of § 780.35 on excess spoil. The excess spoil requirements are not appropriate to abandoned coal refuse remining operations because, in order to mine the refuse, these operations will not remove overburden and, consequently, will not produce excess spoil.

Part 829—Special Permanent Program Performance Standards: Abandoned Coal Refuse Remining Operations

Proposed part 829 contains special performance standards for abandoned coal refuse remining operations. As discussed below, many of the provisions in part 829 incorporate by reference the requirements of parts 816 and 817, or adapt them as appropriate.

Section 829.1 *Scope*

This proposed section would state that part 829 contains the performance standards established under the authority of the EPAct and SMCRA. Section 829.1 states that the standards of this part would apply to all abandoned coal refuse remining operations unless otherwise specified. Where specified, the standards would apply either to refuse removal operations or to on-site refuse reprocessing operations. We also explain the use of the pronouns “we”, “our”, and “us,” which refer to the regulatory authority and the pronouns “you” and “your,” which refer to the applicant and operator. We use pronouns throughout this part in order to make the regulations more readable.

Section 829.2 *Objectives*

The objective of this part is to ensure that abandoned coal refuse remining operations are conducted in a manner that preserves and enhances environmental and other values following reclamation in accordance with the requirements of SMCRA, as amended by the EPAct.

Section 829.3 *General Requirements*

Proposed § 829.3 would require that any person intending to conduct abandoned coal refuse remining operations obtain a permit in accordance with part 786 and obtain a bond in accordance with subchapter J. Proposed § 829.3 specifies that any person who conducts abandoned coal

refuse remining operations would be subject to the existing requirements of:

- § 816.43—Diversions.
- § 816.47—Hydrologic balance: Discharge structures.
- § 816.57—Hydrologic balance: Stream buffer zones.
- § 816.59—Coal recovery.
- § 816.61—Use of explosives: General requirements.
- § 816.62—Use of explosives: Pre-blasting survey.
- § 816.64—Use of explosives: Blasting schedule.
- § 816.66—Use of explosives: Blasting signs, warnings and access control.
- § 816.67—Use of explosives: Control of adverse effects.
- § 816.68—Use of explosives: Records of blasting operations.
- § 816.79—Protection of underground mining.
- § 816.87—Coal mine waste: Burning and burned waste utilization.
- § 816.97—Protection of fish, wildlife, and related environmental values.
- § 816.131—Cessation of operations: Temporary.
- § 816.132—Cessation of operations: Permanent.
- § 816.150—Roads: General.
- § 816.151—Primary roads.
- § 816.180—Utility installation.
- § 816.181—Support facilities.

Section 829.10 *Information Collection*

Proposed § 829.10 contains information on the Office of Management and Budget's approval of the information collection requirements of part 829. Part 829 sets forth the minimum environmental protection performance standards for abandoned coal refuse remining operations, and requires periodic submission of performance data or inspection surveys that relate to these operations. Proposed part 829 implements sections 515/516 of SMCRA, as amended by the EPAct. We estimate that each year, each of the 22 remining operators would require approximately 180 hours, depending on which requirements of §§ 829.3 and 829.81 are met, and \$200 per operator to complete the requirements of this part. In addition, for each of the 22 remining applications that would be reviewed, the regulatory authority would require 20 hours, with no non-wage costs, to review the information required by part 829.

Section 829.11 *Signs and Markers*

Proposed § 829.11 retains the requirements of § 816.11 for signs and markers except that, in lieu of the requirements of § 816.22 referenced in § 816.11(f), our proposal would reference § 829.22, which applies to topsoil markers.

Section 829.13 Casing and Sealing of Drill Holes, Portals, and Other Openings

Proposed § 829.13 retains the requirements of §§ 817.13, 817.14, and 817.15 for the casing and sealing of holes and other openings that might be encountered except that, in lieu of the requirements of § 817.41 referenced in §§ 817.13 and 817.15 regarding the use of monitoring hole or other openings for water wells, the requirements of § 829.41 apply.

Section 829.22 Soils and Other Vegetation-Support Material

Proposed § 829.22 would provide different requirements than those of § 816.22 for reasons discussed below. Under our proposed regulations, the operator would be required to select and manage vegetation-support materials to achieve a vegetative cover at least equal to the existing vegetative cover on the abandoned coal refuse site. Proposed § 829.22(b) would apply the requirement of § 816.22(d)(4) for application of nutrients and soil amendments when necessary to establish the vegetative cover.

The proposed regulation, in part, includes requirements similar to those of § 816.22(b) and (e) which apply to surface mining operations where existing topsoil is not suitable to sustain vegetation. The proposed regulation would not apply the requirements of § 816.22(a), (c), and (d), which govern the removal, storage and redistribution of topsoil respectively, as most refuse piles have little, if any, retrievable topsoil. The proposed regulation at § 829.22, however, would provide us latitude, on a permit-specific basis, to require specific storage and redistribution plans for vegetation-support material.

We believe the approach of proposed § 829.22 would reflect the soil conditions encountered at the great majority of abandoned coal refuse sites. An abandoned coal refuse site usually contains a variety of vegetation-support materials that, when enriched with soil amendments, would be more suitable for vegetative growth than if the vegetation-support materials were left in an unaugmented state. As an example, the operator may select weathered earth materials on the surface of the abandoned coal refuse pile or refuse site and add appropriate soil amendments to produce a material much more suitable for sustaining vegetative growth. In this regard, sub-surface materials or soil from off the refuse pile or refuse site may also be available and better suited for revegetation than the weathered surface materials often found on a refuse

pile or site. Under the proposed regulation, the refuse remaining operator would identify, prior to permit approval, the vegetation-support material that will be used in reclamation. We recognize that sometimes acidic materials may be the only vegetation-support material available to an operator. In such situations, use of acid-tolerant vegetative species and the chemical treatment of the vegetative-support materials may be necessary to establish and sustain vegetative growth. The operator may use a certified soil scientist to certify that the proposed vegetation-support material is equal to or better than that existing on the abandoned coal refuse site. This certification is not, however, proposed as a requirement.

Section 829.41 Hydrologic-Balance Protection

Proposed § 829.41(a), which would apply to on-site reprocessing operations, would apply most of the requirements of § 816.41, hydrologic-balance protection; and § 816.42, hydrologic balance: water quality standards and effluent limitations. The proposed rule would not apply the requirement in § 816.41(b)(2) to restore recharge capacity. Also, in lieu of the requirements of § 780.21(h) referenced in § 816.41, the proposed rule would apply the requirements of § 786.15(a)(2).

Because the washing processes associated with on-site reprocessing operations often have comparable impacts on surface and ground water systems to those caused by other surface coal mining operations, our proposed rule would retain existing hydrologic balance performance standards. The sole exception is the requirement to restore recharge capacity. This requirement is not appropriate to reprocessing operations because they neither remove nor replace overburden, nor remove or disturb strata that serve as aquifers. Therefore, reprocessing does not involve actions that necessitate restoration of recharge capacity.

Proposed § 829.41(b)(1) applies to refuse removal operations and would apply most of the principal provisions of § 816.41, except for the requirement of § 816.41(b)(2) to restore recharge capacity. We believe it is not appropriate to require restoration of recharge capacity for sites of removal operations, because, like underground mines, removal operations do not remove or replace overburden. In order to ensure consistency of requirements related to abandoned coal refuse remaining operations, the proposed regulation also would apply the ground-

and surface-water monitoring requirements of proposed part 786 instead of those in § 816.41.

The proposed regulations generally would prohibit discharge of waste and water, into underground mine works. These requirements are similar to the requirements of § 816.41(i)(2). However, discharges from removal operations into underground works may in some cases be appropriate. Therefore, proposed § 829.41(b)(iv) would authorize discharges into underground mine works if we approve the discharge and the operator demonstrates that the operation would meet the following requirements of § 816.41(i): The permit would include baseline ground-water and geologic information to describe the hydrologic and geologic conditions associated with the underground mine works; the PHC would address the impacts that the discharges will have on ground- and surface-water users; the hydrologic reclamation plan would include measures to remediate potential impacts to ground- and surface-water users; and provision would be made for monitoring ground- and surface-water systems.

Section 829.45 Hydrologic Balance: Sediment Control Measures

Proposed § 829.45 would apply the sediment control requirements of § 816.45 except that, in lieu of the requirements of §§ 816.102 and 816.111(b) referenced in § 816.45, the requirements of §§ 829.102 and 829.111 would apply. See the discussion below of §§ 829.102 and 829.111.

Section 829.46 Hydrologic Balance: Siltation Structures

Proposed § 829.46 would apply the requirements of § 816.46 for siltation structures with the exception of § 816.46(b)(2), which is currently suspended. Also, in lieu of the requirements of §§ 816.42 and 816.49 referenced in section 816.46, the requirements of §§ 829.41(b) and 829.49 would apply. See the discussion infra of §§ 829.41(b) and 829.49.

Section 829.49 Impoundments

Proposed § 829.49 would apply the requirements of §§ 816.49 and 816.56 for impoundments and the rehabilitation of sedimentation ponds, diversions, impoundments, and treatment facilities except that, in lieu of § 780.25 as referenced in § 816.49, the requirements of proposed § 786.14(c), would apply. Furthermore, proposed § 829.49(b) would allow the retention of permanent impoundments on reclaimed coal refuse in only two circumstances. First, the proposed rule would allow

retention of impoundments that do not have a retaining embankment (e.g., dug-out type impoundments). Second, the proposed rule would allow the retention of impoundments on non-steep slope locations if the impounding structures meet the requirements of § 816.49. A retained structure that meets the requirements of § 816.49 would be suitable for the approved postmining land use, such as a wetland.

Excess Spoil

The proposed rule would not apply the excess spoil requirements of §§ 816.71 through 816.74. Because abandoned coal refuse remining operations will not remove overburden in order to extract the refuse, they will not generate spoil. Proposed § 829.102 would address the grading requirements appropriate to rock and refuse disposal.

Section 829.81 Redeposition and Handling of Coal Mine Waste and Coal Refuse Piles

Proposed § 829.81 would apply most of the requirements of § 816.81, 816.83, and 816.84 for coal mine waste. Proposed § 829.81(a) would specify that we may, on a site-specific basis, alter the “design certification” and “foundation” standards of § 816.81(c) and (d), and the inspection requirements of § 816.83(c). We are proposing this provision because abandoned coal refuse remining operations may occur on refuse sites with different refuse characteristics, and for different sites different refuse requirements may be appropriate. For example, some refuse remining operations may result in total removal of refuse from the site and others may result in small amounts of waste being left behind that can be graded into the surrounding terrain with little effect on site stability. Still other operations may result in relatively significant amounts of material being left on the site that would need to be configured during reclamation as a mound or refuse pile. And even within the same site, different aggregations of refuse material may have different physical characteristics and, following weathering, different stability characteristics. For example, cohesion is an important factor in slope stability analyses and resulting safety factors. Most pre-SMCRA coal refuse material has weathered extensively, resulting in finer clay-like particle sizes and increased cohesion. However, some refuse material has not weathered extensively, so rock sizes are coarse and the refuse may have little or no cohesion.

Because of the wide range in refuse material composition and weathering, as

well as the varying amount of refuse material that may remain on the site following reclamation, we believe that the regulatory authority should have the latitude, on a site-specific basis, to allow alternate design and foundation standards for handling and redeposition of coal refuse. The regulatory authority could, for example, require safety factors ranging from 1.3–1.5 in lieu of requiring the same value in all cases. For these same reasons, detailed site inspections by a professional engineer or other specialist may not be warranted in every case. We believe that the regulatory authority can best decide, on a site-specific basis, the needed amount of detail in the inspection, the required inspection frequency, and/or the necessary qualifications of the inspector.

Proposed § 829.81(b) would provide that refuse waste deposited adjacent to the refuse site (i.e., next to the site where the coal refuse was originally deposited) must comply with the standards of §§ 816.81 through 816.84. We believe these standards are appropriate because such adjacent disposal would create new coal refuse disposal structures.

Proposed § 829.81(c) authorizes the underground disposal of coal refuse waste only when the requirements of both section 816.81(f) and proposed § 829.41(b)(1)(i) are met. The rationale for limiting the underground disposal of waste solely to refuse removal operations is addressed above in the preamble discussion of proposed § 829.41.

Proposed § 829.81(d) would not apply the 4-foot cover requirement of § 816.83(c)(4), because adequate amounts of nontoxic and noncombustible cover material are generally not available on abandoned coal refuse sites. However, proposed § 829.102, does require that any remaining refuse from an abandoned coal refuse remining operation must be covered with sufficient noncombustible and nontoxic material to prevent sustained combustion. Section 829.81(d) would allow us to approve site-specific variations in the amount and type of cover material used, to prevent sustained combustion and support vegetation.

Proposed § 829.81(e) would not apply the vegetation removal requirement of § 816.83(c)(1) or the permanent impoundment prohibition of § 816.83(c)(3), because these two topics are addressed in proposed §§ 829.22 and 829.49, respectively.

For placement of coal mine waste, proposed § 829.81(f) would apply the requirements of § 816.83(c); except that,

in lieu of the requirements of § 816.22 referenced in § 816.83(c), the requirements of proposed section 829.22 would apply in order to ensure consistency of requirements related to abandoned coal refuse remining operations.

Section 829.89 Disposal of Noncoal Mine Waste

Proposed § 829.89(a) would apply the requirements of §§ 816.89(a) and (b) for the disposal of noncoal mine wastes with one exception. In lieu of the requirements of §§ 816.111 through 816.116 referenced in section 816.89(b), the operation would be required to comply with the cover and vegetation requirements of proposed § 829.111.

Proposed §§ 829.89(b) and (c), in lieu of the requirements of § 816.89(c), would authorize the disposal of noncombustible noncoal mine waste, including coal combustion wastes, within the refuse pile if the disposal will not adversely affect final site reclamation or public health and safety. This provision recognizes the possible benefits of bringing noncombustible alkaline wastes to the site as well as the probability of encountering large pieces of abandoned equipment or machinery, and would allow on-site disposal of both. We expect that the regulatory authority would require the applicant to provide an analysis of any noncombustible wastes proposed to be disposed at the site and that the regulatory authority would use this analysis to determine that the disposal would not adversely affect final site reclamation or public health and safety.

Section 829.95 Stabilization of Surface Areas

Proposed § 829.95 would apply the provisions of § 816.95 concerning the stabilization of surface areas except that the section has been reworded to reflect that vegetation-support material, instead of topsoil, would be used to repair rills and gullies.

Section 829.99 Slides and Other Damage

Proposed § 829.99 would apply the requirements of § 816.99(b) concerning operator responsibilities if a slide should occur. The proposed rule would not apply § 816.99(a), which requires the retention of an undisturbed natural barrier. The barrier requirement generally applies to contour and mountaintop removal mining operations that backfill spoil on the mined-out bench. This barrier provision, however, is not appropriate to abandoned coal refuse remining operations because these operations do not remove in-place

rock in order to extract the refuse. Consequently, the opportunity for the retention of an undisturbed natural barrier does not exist.

Section 829.100 Contemporaneous Reclamation

Proposed § 829.100 would apply the requirement of § 816.100 to reclaim the disturbed area as contemporaneously as practicable with the abandoned coal refuse remining operation. In addition, the proposed rule would require the permit to establish a schedule for the contemporaneous reclamation of the site.

During the formation of this rulemaking, personnel from OSM, the States, industry and the environmental community visited numerous abandoned coal refuse sites throughout the country. Some of these sites had been remined and reclaimed or were in the process of being reclaimed. Other partially remined sites had been abandoned and left unreclaimed. In order to minimize the amount of land left unreclaimed if a site permitted under this rule is abandoned, we are proposing that the permit contain a schedule defining contemporaneous reclamation. A schedule would make it possible for the regulatory authority to verify that reclamation is proceeding in a timely fashion and to take prompt action if there is a question about abandonment.

Section 829.102 Grading

As discussed below, proposed § 829.102 would apply, with some revision, many of the requirements of § 816.102, and would provide different requirements than those of §§ 816.106 and 816.107. The proposed rule would not retain the requirements of §§ 816.102(k), 816.104 and 816.105 because they pertain to removal of thin and thick overburden, mountaintop removal, and variances from approximate original contour (AOC). These standards all address removal and replacement of overburden and, as discussed above, overburden removal does not occur in abandoned coal refuse remining operations.

Proposed § 829.102 also would not apply the requirements of § 816.102(a)(1) and (k) for approximate original contour (AOC), the requirements of § 816.102(b) and (d) for excess spoil and the placement of spoil outside the permit, or the requirements of § 816.102(i) for permanent impoundments. It is not appropriate to require AOC for a remined refuse pile site, because the amount of spoil, rock waste, and refuse remaining after refuse remining may be either less than or

greater than the amount needed to make the site closely resemble the general surface configuration of the land prior to the original placement of the refuse.

Because abandoned coal refuse remining operations will not remove overburden to extract the refuse, “spoil,” as defined in § 701.5, will not be generated by these operations. Rather, these operations may encounter existing spoil left by the abandoned mine operation. See the definition of “spoil” in section 701.5, which would encompass any existing spoil encountered at an abandoned coal refuse site. The proposed references to “rock waste” would refer to rock produced from such activities as road construction and highwall stabilization.

More specifically, proposed § 829.102(a) would require that grading be done in accordance with the redeposition handling requirements of proposed section 829.81. Proposed § 829.102(a) also would require that grading activities be completed according to the reclamation plan schedule required by proposed § 786.14(a).

Proposed § 829.102(b) would apply the requirements of § 816.102(a) except for the requirement to achieve AOC. As discussed above, a requirement to achieve AOC is not appropriate because the land surface and elevations of abandoned coal refuse remining sites have already been altered from their original pre-mined conditions, and refuse remining does not remove overburden. Proposed § 829.102(b) would apply the 1.3 static safety factor that is required by § 816.102(a)(3) and 816.102(e).

The proposed rule would not apply the requirements of § 816.102(b), (c), and (d), which primarily relate to spoil. As noted above, spoil will not be generated by abandoned coal refuse remining operations. The requirement of § 816.102(c) to compact waste where advisable is duplicative of § 816.81(a), which would be applied to abandoned coal refuse remining operations by proposed § 829.81(a).

Proposed § 829.102(c) would allow land adjacent to the refuse remining site to be graded to conform to the remining site. This paragraph further requires that vegetation-support material from the adjacent area be removed and stored prior to such grading so that it will be available for future use at both sites.

Proposed § 829.102(d) would apply the requirements of section 816.102(f) concerning covering or treating both exposed coal seams and combustible material to prevent sustained combustion. The requirement of § 816.102(f) to cover acid- and toxic-

forming material would be addressed by proposed § 829.41.

Proposed § 829.102(e), (f), and (g) would generally apply the requirements of sections 816.102(g), (h) and (j). The permanent impoundments requirements of section 816.102(i) would be addressed at § 829.49 and would not be addressed in section 829.102.

Proposed § 829.102(h) would apply the principal elements of § 816.106. Under this proposed provision, highwalls and other mining-related rock cuts encountered or uncovered during refuse remining operations would be eliminated to the extent technically practicable given available backfill material and stability considerations. Such rock cuts may exist in refuse sites located in valley fills, hillside areas, and strip cuts. The proposed paragraph would require that available spoil, rock waste, or refuse from the abandoned coal refuse site disturbed by the operation would be used to eliminate rock cuts in a safe manner consistent with achieving site stability. Proposed § 829.102(h) does not contain an “other reasonably available spoil” provision comparable to that found in § 816.106(b)(1) concerning elimination of highwalls. This provision was not included because it could involve disturbance and potential destabilization of previously mined areas adjacent to those where the refuse remining will occur. While grading of adjacent areas may be necessary in some instances for stability purposes, it may not be desirable to disturb those areas in other instances, solely to obtain backfill material.

Proposed § 829.102(i) would apply to remining of abandoned coal refuse sites located on steep slopes. Unlike § 816.107(c), this paragraph would not prohibit disturbing land above the highwall, and would allow us to authorize up-slope disturbances when warranted for diversions or other operations-related activities. Proposed § 829.102(i)(1), which prohibits placing specified materials on the downslope below the elevation of the refuse site, would be consistent with the prohibitions in § 816.107(b) against placing materials on the downslope. Proposed § 829.102(i) would impose additional requirements to minimize the potential that refuse remining activities on steep slopes will result in unstable conditions. More specifically, proposed § 829.102(i)(2)(i) would require refuse on steep slopes to be removed in horizontal lifts, i.e., in horizontal layers, starting at the top of the refuse pile. Proposed § 829.102(i)(2)(ii) further would prohibit the removal of the toe of the refuse until the removal of refuse by

horizontal lifts progresses down to that level. Because alternate extraction methods may be necessary for some refuse remining sites, proposed § 829.102(i)(3) would allow us to waive the requirements of § 829.102(i)(2)(i) and (ii) if the permit demonstrates, on the basis of stability analyses, that the alternate methods would not result in unstable conditions during refuse remining.

Section 829.111 Revegetation, Standards for Success, and Bond Liability Period

Proposed § 829.111 would require compliance with the revegetation requirements of §§ 816.111(b)–(d), 816.113, and 816.114, while establishing revegetation success standards and responsibility periods that differ from those of § 816.116.

Proposed § 829.111(a) generally would retain the requirements of § 816.111(a), with the exception of the requirement for a diverse vegetative cover. Because of limitations often found in the quality of the soil or other surface materials at abandoned coal refuse sites, proposed paragraph (a) would not include the requirement of § 816.111(a)(1) to achieve a diverse cover on regraded areas and all other disturbed areas. For sites that are currently barren or sparsely vegetated, the proposal would require that the operator establish sufficient vegetation to stabilize the surface area. Such stabilization of the surface area should be attainable using surface materials found at the site, augmented by soil amendments and, where necessary, by additional soil brought in from borrow areas. This requirement for sufficient vegetation to stabilize the surface area is comparable to existing requirements for AML refuse reclamation projects. Proposed § 829.111(b) and (c) would require that the operator stabilize the surface from erosion in accordance with proposed § 829.95 and establish a vegetative cover no less than that which existed on the site prior to the abandoned coal refuse remining operation. In our field review of abandoned coal refuse sites, we found that many sites had little or no ground cover. When there was ground cover at these sites, the cover most often consisted of only a few species. Other abandoned coal refuse sites were reforested with a full tree canopy or contained wetlands with an extensive cover of marsh vegetation, often of a single species that developed on slurry ponds. In light of these observations, the proposed rule would require that erosion be stabilized and a vegetative cover be established that is no less than

that encountered at the site prior to remining.

Proposed § 829.111(d) would incorporate § 816.116(c), which establishes the revegetation responsibility period and contains certain related requirements pertaining to the evaluation of revegetation success, with two modifications. As proposed, the rule would establish a revegetation responsibility period of two full years after the last year of augmented seeding, fertilizing, irrigating or other work for areas with an average annual precipitation greater than 26.0 inches. The responsibility period would be five full years after the last year of augmented seeding, fertilizing, irrigating or other work for areas with an average annual precipitation equal to or less than 26.0 inches.

At present, § 816.116(c)(2) contains two responsibility periods for areas with an average annual precipitation greater than 26.0 inches. Under paragraph (c)(2)(i), the period is five full years after the last year of augmented seeding, fertilizing, irrigating or other work; but paragraph (c)(2)(ii) reduces that period to two full years for lands eligible for remining if those lands are included in a permit issued under 30 CFR 785.25. Similarly, § 816.116(c)(3) currently contains two responsibility periods for areas with an average annual precipitation equal to or less than 26.0 inches. Under paragraph (c)(3)(i), the period is ten full years after the last year of augmented seeding, fertilizing, irrigating or other work; but paragraph (c)(3)(ii) reduces that period to five full years for lands eligible for remining if those lands are included in a permit issued under 30 CFR 785.25.

The shortened revegetation responsibility periods in paragraphs (c)(2)(ii) and (c)(3)(ii) of § 816.116 correspond to a provision in section 2503(b) of the Energy Policy Act of 1992 that added similar language to section 515(b)(20) of SMCRA as an incentive for remining operations.

Section 829.133 Postmining Land Use

Proposed § 829.133 would provide different requirements for postmining land use than those of § 816.133 which sets forth detailed criteria for determining premining uses of the land as well as detailed criteria for alternative postmining land uses. In lieu of these existing provisions, the proposed rule would require that all areas disturbed by abandoned coal refuse remining operations be restored to a condition capable of supporting the uses or higher or better uses than those that existed at the abandoned coal

refuse site prior to commencement of the refuse remining operations.

Our proposal to require that the operator restore the abandoned coal refuse site to a condition capable of supporting an equivalent or higher or better use than that which existed before the remining operation is a function of the physical characteristics typically encountered at abandoned coal refuse sites. Most abandoned coal refuse sites pose environmental problems and are eligible for reclamation and acid mine drainage abatement under the Abandoned Mine Land Reclamation Fund. The range of environmental and safety problems typically found at these sites includes acid mine drainage and acid ponds, dust and erosion, unstable conditions, slides, lack of topsoil, refuse fires, etc. Many of these sites are little more than “moonscapes” where the existing vegetative cover is dramatically less than what one would ordinarily expect from an undeveloped land use. In such cases, the cost-effective postmining land use options available to the site are extremely limited. Accordingly, our proposed rule would require the site at least to be stabilized and covered with vegetation that would grow in available vegetative-support material and in a manner similar to the reclamation done under the AML program. In some cases, revegetation will involve planting wetland species, whereas in other cases, acid-tolerant species will be planted as the only species capable of achieving revegetation. In all cases, the site must be restored to a condition capable of supporting at least an equivalent use or a higher or better use than that which existed at the time of the abandoned coal refuse remining operation.

III. Public Comment Procedures

Electronic or Written Comments: If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

Except for comments provided in an electronic format, you should submit three copies of your comments if possible. We cannot ensure that comments received after the close of the comment period (see **DATES**) or at

locations other than those listed above (see **ADDRESSES**) will be considered or included in the Administrative Record.

Availability of Comments: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours at the OSM Administrative Record Room (see **ADDRESSES**). Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, to the extent allowed by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment and you must submit your comment by regular mail, not by e-mail. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Public hearings: We will hold a public hearing on the proposed regulations upon request only. The time, date, and address for any hearing will be announced in the **Federal Register** at least 7 days prior to the hearing.

Any person interested in participating at a hearing should inform Andy DeVito (see **FOR FURTHER INFORMATION CONTACT**), either orally or in writing by 4:30 p.m., Eastern time, on February 7, 2007. Any disabled individual who requires special accommodation to attend a public hearing should also contact Andy DeVito so that appropriate arrangements can be made.

If no one has contacted Mr. DeVito to express an interest in participating in a hearing by that date, a hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held, with the results included in the Administrative Record.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard. To assist the transcriber and ensure an accurate record, we request, if possible, that each person who testifies at a public hearing provide us with a written copy of his or her testimony.

IV. Procedural Matters

What Are the Effects of This Rule on Federal Program States and on Indian Lands?

The proposed revisions, if adopted, will apply through cross-referencing in those States with Federal programs: California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. The proposed regulations, if adopted, will also apply through cross-referencing to abandoned coal refuse remining operations on Indian lands, because we will amend the regulations in parts 750 and 785 for the purpose of incorporating by reference parts 786 and 829 into the programs for Indian lands and the Federal program States. Comments are specifically solicited as to whether unique conditions exist in any of these Federal program States or on Indian lands relating to this proposal that should be reflected either as changes to the national regulations or as specific amendments to any or all of the Federal programs or the Indian lands program.

How Will This Rule Affect State Programs?

Following publication of the final regulations, we will evaluate the State programs approved under section 503 of SMCRA to determine if any changes in those programs may be necessary. When we determine that a State program should be amended, the particular State will be notified in accordance with the provisions of 30 CFR 732.17. On the basis of the proposed regulations, we have made a preliminary determination that States may adopt similar regulations if they choose to, but we will not require them to amend their programs.

Section 529 of SMCRA authorizes the Secretary to promulgate separate regulations for anthracite coal mines. That provision is implemented through § 785.11 for permitting requirements and part 820 for performance standards. The Federal regulatory requirements essentially incorporate the anthracite program of the Commonwealth of Pennsylvania. That program, therefore, applies to anthracite culm banks and refuse piles. No change to § 785.11 or part 820 is considered necessary to apply these proposed regulations to anthracite refuse sites. Once proposed regulations for abandoned coal refuse remining operations are finalized, Pennsylvania may modify its anthracite

program in accordance with part 732 to incorporate the provisions provided herein in order to facilitate the removal and/or reprocessing of anthracite refuse sites.

Executive Order 12866—Regulatory Planning and Review

These regulations are considered significant and are subject to review by the Office of Management and Budget under Executive Order 12866.

a. The regulations may raise novel legal or policy issues, which is the reason why they are considered significant under Executive Order 12866.

b. The regulations would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

c. The regulations would not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

d. The regulations will not have an effect of \$100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, Tribal, or local governments or communities. The proposed regulations will not have an adverse economic impact on the coal industry or State regulatory authorities. This determination is based on the fact that the proposed regulations will facilitate the removal and/or reprocessing of coal refuse piles, abandoned prior to the enactment of SMCRA, by private industry for use as fuel for electric power generation. Coal refuse removal and reprocessing operations conducted under the new regulations are by choice. It is expected that such operations will result in significant positive benefits, both tangible and intangible. The benefits of such operations include:

Elimination of Health and Safety Problems

Serious health and safety problems are associated with refuse disposal sites. These problems include:

Refuse piles placed on hillsides, such as exist throughout Appalachia, may be unstable and slip, resulting in landslides.

Refuse is often easily combustible because of its significant coal content. As a result, burning refuse banks have been serious problems, both in terms of the noxious fumes emitted and the potential for fires spreading to adjacent areas and to nearby residences. Most of the burning piles have been reclaimed using AML Fund monies, but unreclaimed refuse piles have the

potential for catching on fire and becoming a hazard.

Refuse piles are attractive for off-road vehicle use which, because of the piles' unstable and steep slopes, can result in injury and even death.

Automobile accidents have been reported where dirt and rock have washed across highways from an adjacent abandoned refuse pile.

Many of these hazards will be eliminated by the removal and reclamation of the refuse piles that will be facilitated by the proposed regulations.

Elimination or Reduction of Existing Ongoing Environmental Problems

Refuse pile removal, followed by grading and revegetating the site, will eliminate or significantly reduce environmental problems associated with such piles including (1) Acid drainage and pollution of adjacent streams resulting from the large amounts of pyritic materials that are often present; (2) uncontrolled erosion resulting in stream siltation and downstream flooding; and (3) diminished aesthetic qualities.

Establishment of Vegetative-Support Material and Vegetative Cover

There is generally little or no topsoil existing on the surface of abandoned refuse sites. Typically, the topsoil was either buried or lost during the original refuse placement. Vegetation may be sparse and vary widely throughout the site. Removal of refuse material followed by reclamation of the site would allow identification of more suitable vegetation-support materials such as weathered earth or sub-surface materials that, with appropriate soil amendments, would be more suitable for vegetative growth than the existing vegetation-support materials without soil amendments. OSM recognizes that sometimes acidic materials are the only vegetation-support material available to an operator. In such situations, use of acid-tolerant vegetative species may be necessary in addition to surface treatment with chemicals. The end result would be establishment of a vegetative cover sufficient to prevent erosion and sedimentation, and compatible with a higher land use.

Recovery of Lost Coal Values

Refuse piles may have a carbon content ranging from a low of 27.5 percent to a high of 98.9 percent of the original coal values that were mined. Recovery of these formerly "lost" coal values, either by reprocessing or by directly burning the refuse, in a sense increases the nation's coal resources.

Since the percentage of recoverable coal varies widely, we are, for computation purposes, assuming that the coal refuse, on average, contains from 5,000 to 8,000 Btu/lb, or about half the Btu value of bituminous coal. Therefore, the 9 million tons of refuse projected to be recovered/utilized annually represents, theoretically, at least 4.5 million tons of coal that could be added to the coal reserve base each year.

Reclamation Without Recourse to Limited Abandoned Mine Land Funds

Available data on reclaiming refuse sites indicates that the average reclamation costs will range from \$200 to \$70,000 per acre. These data also indicate that, depending on its size and configuration, a refuse pile contains approximately 40,000 tons of refuse per acre. Assuming that the analysis provided in the previous paragraph is reasonable, the 9 million tons of refuse projected to be recovered annually equates to 222 acres reclaimed annually. Reclamation costs for these 222 acres are estimated, using an average cost of \$14,797 per acre, to be \$3.3 million. Therefore, there is the potential for an estimated annual savings of \$3.3 million in AML fund expenditures because government will be relieved of most reclamation costs for sites remined under the proposed regulations.

Increased Employment

It is projected that refuse burning power plants will be fueled by 20–22 refuse removal/reprocessing operations that will be active at any given time. Four categories of employees that will be working at either the co-generation stations or the refuse recovery operations have been identified. These categories include the construction workers for building new power generating stations; the power plant employees; refuse removal/reprocessing operation employees; and truck drivers.

Increased and Improved Variety of Potential Land Uses

Land use alternatives for these reclaimed sites could include, for example, returning the site to a forest, grassy field, or wildlife habitat that existed prior to mining; or creating areas that will allow residential or commercial development, or construction of parks, ball fields, gun clubs or other sports facilities.

Numerous examples of these uses for former refuse sites abound throughout the coal regions. It is expected that such uses will be enhanced by the proposed regulations.

Enhancement of Local Quality of Life and Adjacent Property Values

Removal or reprocessing these refuse sites will have a significant synergistic effect in that, by eliminating the attendant health, safety, and environmental problems, land use alternatives at the site will increase, the quality of life in nearby communities will be improved, and, it is anticipated, adjacent property values will often be enhanced.

Costs Associated With the Rule

Once fully implemented, the annual costs of this rule is estimated to be approximately \$624,000 per year. That figure is based on an assumption that approximately 16 permit applications will be submitted each year under this rule and that it will cost each applicant \$28,000 to prepare a permit application, and \$11,000 for a regulatory authority to review and approve the application. Costs resulting from the rule would include the following:

- *Industry costs.* We estimate that annually, approximately 16 companies will apply for permits under these regulations. The estimated cost to prepare a permit application under the proposed regulations is approximately \$28,000 per applicant. This estimate is based on the burden hours associated with the regulatory wage hour requirements in the rule multiplied by industry compliance costs of \$60.00 per hour. See the burden hour tables below in the section on the Paperwork Reduction Act. Permit applicant costs would be covered by the profits derived from the sale of the coal removed.

- *State Costs.* There would be costs to those States that decide to issue equivalent State regulations. We estimate that approximately 7–10 States may voluntarily decide to promulgate equivalent State regulations. Fifty percent of State costs would be covered by the annual regulatory grant to the State from the Federal government. Costs would vary by State; however, grants to the States do not have per regulation cost breakdown. We can estimate that it will cost a State approximately \$4500 to promulgate regulations and submit a State program amendment to OSM. This estimate is based on the burden hours associated with the regulatory requirements in 30 CFR 732.17 for submitting a State program amendment. The State cost is then reduced by 50 percent to \$4,500 as a result of the annual regulatory grant given to the State by OSM. In addition, it will cost States approximately \$11,000 to review and approve an application submitted under the

proposed regulations. This estimate is based on the burden hours associated with the regulatory requirements in the rule multiplied by State compliance costs of \$45.00 per hour. See the burden hour tables below in the section on the Paperwork Reduction Act.

• *Federal Costs.* There would be costs to the Federal government in reviewing and approving submitted State program amendments. Data for FY 2005, available from OSM's cost accounting system, indicates that the average cost to process a proposed State program amendment is approximately \$830.00 and for a final rule, \$6,120. If 10 States were to submit proposed and final State program amendments the cost to the Federal Government would be approximately \$130,700 (10 × [\$830 + \$6,120] = \$130,700).

Regulatory Flexibility Act

The Department of the Interior certifies that these regulations will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). For the reasons previously stated, the proposed regulations will not have an adverse economic impact on the coal industry or State regulatory authorities. Further, the regulations will not produce adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets.

Small Business Regulatory Enforcement Fairness Act

For the reasons previously stated, the regulations are not considered "major" under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The regulations:

- Do not have an annual effect on the economy of \$100 million or more.
- Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or

local government agencies, or geographic regions.

c. Do not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises for the reasons stated above.

Unfunded Mandates

These regulations do not impose an unfunded mandate on State, Tribal, or local governments or the private sector of more than \$100 million per year. The regulations do not have a significant or unique effect on State, Tribal, or local governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is not required.

Executive Order 12630—Takings

In accordance with Executive Order 12630, the regulations do not have takings implications to require a takings implication analysis.

Executive Order 12988—Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the regulations do not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13132—Federalism

In accordance with Executive Order 13132, the regulations do not have Federalism implications sufficient to warrant the preparation of a Federalism Assessment for the reasons discussed above.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of these regulations on Federally-recognized Indian tribes and have determined that the proposed additions

of parts 786 and 829 would not have substantial direct effects on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

These regulations are not considered a significant energy action under Executive Order 13211. The proposed additions of parts 786 and 829 would not have a significant effect on the supply, distribution, or use of energy.

Paperwork Reduction Act

In accordance with 44 U.S.C. 3507(d), OSM has submitted the information collection and recordkeeping requirements of 30 CFR parts 786 and 829 to the Office of Management and Budget (OMB) for review and approval.

30 CFR Part 786

Title: Requirements for Permits for Abandoned Coal Refuse Remining Operations—30 CFR part 786.

OMB Control Number: 1029–XXX1.

Summary: Proposed 30 CFR part 786 sets forth the requirements for obtaining a permit for abandoned coal refuse remining operations. The requirements would ensure that the permit applicant obtains a permit to conduct an abandoned coal refuse remining operation in accordance with the requirements of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), as amended by the Energy Policy Act of 1992 (EPA Act).

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: 16 Surface coal mining permit applicants and 15 State regulatory authorities.

Total Annual Responses: 31.

Total Annual Burden Hours: 10,542.

SUMMARY ANNUAL BURDEN TO RESPONDENTS FOR 30 CFR 786

Section	Number of applicants	Hours per applicant	Number of States	Hours per State	Total hours requested
786.12(a)	16	25	15	5	475
786.12(b) & (c)	16	17	15	1	287
786.12(d)	16	16	15	6	346
786.12(e)	16	35	15	20	860
786.13(a)	16	15	15	5	315
786.13(b)	16	8	2	158	
786.13(c)	2	4	2	2	12
786.13(d)	16	40	15	20	940
786.13(e)	2	3	2	1	8
786.13(f)	16	8	15	4	188
786.13(g)	16	8	15	4	188

SUMMARY ANNUAL BURDEN TO RESPONDENTS FOR 30 CFR 786—Continued

Section	Number of applicants	Hours per applicant	Number of States	Hours per State	Total hours requested
786.14(a)	16	60	15	40	1,560
786.14(b)	16	10	15	5	235
786.14(c)	16	25	15	10	550
786.14(d)	8	30	8	5	280
786.14(e)	16	30	15	20	780
786.15	16	75	15	50	1,950
786.16	16	30	15	20	780
786.17	16	30	15	10	630
Total					10,542

Total Non-Wage Burden Costs:
\$77,560.

SUMMARY ANNUAL NON-WAGE COST TO RESPONDENT FOR 30 CFR 786

Section	Number of applicants	Cost per applicant	Total costs
786.12(a)	16	50	800
786.12(b) & (c)	16	50	800
786.12(d)	16	50	800
786.12(e)	16	50	800
786.13(a)	16	50	800
786.13(b)	16	50	800
786.13(c)	2	100	200
786.13(d)	16	120	1,920
786.13(e)	2	20	40
786.13(f)	16	100	1,600
786.13(g)	16	200	3,200
786.14(a)	16	600	9,600
786.14(b)	16	25	400
786.14(c)	16	300	4,800
786.14(d)	8	25	200
786.14(e)	16	145	2,320
786.15	16	2,000	32,000
786.16	16	1,000	16,000
786.17	16	30	480
Total			77,560

30 CFR part 829

Title: Special Permanent Program Performance Standards—Abandoned Coal Refuse Remining Operations—30 CFR part 829.

OMB Control Number: 1029–XXX2.

Summary: Proposed 30 CFR part 829 sets forth the minimum environmental

protection performance standards and would require periodic submission of performance data or inspection surveys that would apply to abandoned coal refuse remining operations. These regulations would implement sections 515 and 516 of SMCRA, as amended by EPCRA.

Bureau Form Number: None.

Frequency of Collection: Once and quarterly.

Description of Respondents: 22 Surface coal mining operators and 22 State regulatory authorities.

Total Annual Responses: 44.

Total Annual Burden Hours: 4,372.

SUMMARY ANNUAL BURDEN TO RESPONDENTS FOR 30 CFR 829

Section	Number of operators	Hours per operator	Number of states	Hours per state	Total hours requested
.3	22		22		2,200
(i)	22	16	0	0	352
(iii)	0	0	22	20	440
(vi)	4	120	0	0	480
(vii)	4	4	0	0	16
(ix)	4	50	0	0	200
(x)	4	12	0	0	48
(xii)	22	12	0	0	264
(xiv)	4	16	0	0	64

SUMMARY ANNUAL BURDEN TO RESPONDENTS FOR 30 CFR 829—Continued

Section	Number of operators	Hours per operator	Number of states	Hours per state	Total hours requested
(xvii)	22	15	0	0	330
.41	22	80	0	0	1,760
.49	22	16	0	0	352
.81	4	15	0	0	60
Total					4,372

Total Non-Wage Burden Costs:
\$4,400.

SUMMARY OF ANNUAL NON-WAGE COST TO RESPONDENTS FOR 30 CFR 829

Section	Number of operators	Cost per operator	Number of states	Cost per state	Total non-wage costs requested
.3	22	150	0	0	3,300
.41	0	0	0	0	0
.49	22	50	0	0	1,100
.81	0	0	0	0	0
Total					4,400

Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of OSM and State regulatory authorities, including whether the information will have practical utility;

(b) The accuracy of OSM's estimate of the burden of the proposed collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of collection on the respondents.

Under the Paperwork Reduction Act, OSM must obtain OMB approval of all information and recordkeeping requirements. No person is required to respond to an information collection request unless the form or regulation requesting the information has a currently valid OMB control (clearance) number. These numbers appear in §§ 786.10 and 829.10. To obtain a copy of OSM's information collection clearance requests, explanatory information, and related forms, contact John A. Trelease at (202) 208-2783 or by e-mail at jtreleas@osmre.gov.

By law, OMB must respond to OSM's request for approval within 60 days of publication of these proposed regulations, but may respond as soon as 30 days after publication. Therefore, to ensure consideration by OMB, you must send comments regarding these burden estimates or any other aspect of these information collection and

recordkeeping requirements by February 16, 2007, to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Interior Desk Officer, via e-mail to OIRA_DOCKET@omb.eop.gov, or via facsimile to (202) 395-6566. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, Room 210—SIB, 1951 Constitution Ave, NW., Washington, DC 20240, or electronically to jtreleas@osmre.gov.

National Environmental Policy Act

We have prepared a draft environmental assessment (EA) of the proposed regulations as required by the procedures implementing the National Environmental Policy Act of 1969 (NEPA). We have made a tentative determination that the proposed regulations would enhance reclamation of abandoned coal refuse piles while guaranteeing environmental protection to the same level provided under sections 515 and 516 of SMCRA. We anticipate that a finding of no significant impact will be made for the final regulations in accordance with our procedures under NEPA. The EA is on file in the OSM Administrative Record at the address specified previously (see ADDRESSES). The EA will be completed and a finding made on the significance of any resulting impacts before we publish the final regulations.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make the proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the proposed regulations contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? (4) Would the regulations be easier to understand if they were divided into more (but shorter) sections (a "section" appears in bold type and is preceded by the symbol "\$" and a numbered heading; for example, § 786.11)? (5) Is the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed regulations? (6) What else could we do to make the proposed regulations easier to understand? Send a copy of any comments that concern how we could make the proposed regulations easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: Exsec@ios.doi.gov.

List of Subjects**30 CFR Part 701**

Law enforcement, Surface mining,
Underground mining.

30 CFR Part 786

Reporting and recordkeeping
requirements, Surface mining,
Underground mining.

30 CFR Part 829

Reporting and recordkeeping
requirements, Environmental
protection, Surface mining.

Dated: May 19, 2006.

Julie A. Jacobson,

*Deputy Assistant Secretary, Land and
Minerals Management.*

For the reasons discussed in the
preamble, the Office of Surface Mining
proposes to amend 30 CFR Chapter VII
as set forth below:

**PART 701—PERMANENT
REGULATORY PROGRAM**

1. The authority citation for part 701
continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 701.5, is amended by
adding alphabetically the definition of
“abandoned coal refuse remining
operations” to read as follows:

§ 701.5 Definitions.

* * * * *

*Abandoned coal refuse remining
operations* means those surface mining
activities for the on-site reprocessing of
abandoned coal refuse and for the
removal of abandoned coal refuse on
lands that would otherwise be eligible
for expenditure under section 404 and
section 402(g)(4) of the Act. Reprocessing
operations include on-site activities that
separate the coal from waste material
using specific gravity or floatation
methods, as well as activities that use
mechanical means to sort and size the
refuse material prior to separation. Removal
operations include on-site activities that
remove refuse from the site as well as
those activities that use mechanical
means to sort and size the refuse material
prior to its removal. The term “abandoned
coal refuse remining operations” does not
encompass the removal of refuse for
non-fuel uses.

* * * * *

3. Add part 786 to read as follows:

**PART 786—REQUIREMENTS FOR
PERMITS FOR ABANDONED COAL
REFUSE REMINING OPERATIONS**

Sec.

786.1 Scope.

786.2 Objectives.

786.3 Definitions.

786.10 Information collection.

786.11 General requirements.

786.12 Information on environmental
resources.

786.13 Information on operation plans.

786.14 Information on reclamation plans.

786.15 Information on hydrology.

786.16 Information on geology and refuse.

786.17 Information on roads and support
facilities.

Authority: 30 U.S.C. 1201 *et seq.*

§ 786.1 Scope.

This part sets forth requirements for
obtaining a permit for abandoned coal
refuse remining operations. Unless
otherwise specified in this part, the
requirements of this part apply to
removal and reprocessing operations. As
used throughout this part, the pronouns
“we”, “our”, and “us” refer to the
regulatory authority and the pronouns
“you” and “your” refer to the applicant
and operator.

§ 786.2 Objectives.

The objective of this part is to ensure
that you obtain a permit to conduct your
abandoned coal refuse remining
operations in accordance with the
requirements of the Surface Mining
Control and Reclamation Act of 1977, as
amended by the Energy Policy Act of
1992.

§ 786.3 Definitions.

As used in this part, the term:

Best management practices (BMPs)
means schedules of activities, operating
and maintenance procedures, treatment
requirements, practices or prohibition of
practices that have as their goal
preventing or reducing chemical
pollution to off-site surface or ground
water, and controlling excessive
sediment concentrations to off-site
surface water.

§ 786.10 Information collection.

The collections of information
contained in part 786 have been
approved by the Office of Management
and Budget (OMB) under 44 U.S.C. 3501
et seq. and assigned clearance number
1029–XXX1. We will use the
information collected to determine if a
permit to conduct abandoned coal
refuse remining operations should be
issued and to ensure that such
operations are conducted in accordance
with the requirements of Act. A federal
agency may not conduct or sponsor, and
you are not required to respond to, a
collection of information unless it
displays a currently valid OMB control
number. Response is required to obtain
a benefit in accordance with Public Law
95–87. Send comments regarding

burden estimates or any other aspect of
this collection of information, including
suggestions for reducing the burden, to
the Office of Surface Mining
Reclamation and Enforcement,
Information Collection Clearance
Officer, Room 210–SIB, 1951
Constitution Avenue, NW., Washington,
DC 20240.

§ 786.11 General requirements.

An abandoned coal refuse remining
operation, as defined in § 701.5 of this
chapter, includes both reprocessing
operations and removal operations. If
you intend to conduct an abandoned
coal refuse remining operation, then you
must submit a permit application that
contains the information required by
subchapter G except that part 786
applies in lieu of the information
required for surface mining activities
under parts 779 and 780 of this chapter,
or the information required for
underground mining activities under
parts 783 and 784 of this chapter. Your
permit application must also
demonstrate that the operation will be
conducted in compliance with the
performance standards of part 829 of
this chapter. You may not begin a
remining operation until we have issued
you a permit.

**§ 786.12 Information on environmental
resources.**

(a) *General and climatological
information.* Your permit application
must include the information required
under §§ 779.11, 779.12, and 779.18 of
this chapter.

(b) *Vegetation information
requirements.* Your permit application
must contain photographs and a written
description of the vegetative cover prior
to redistribution. The photographs and
written description must be in sufficient
detail to estimate the vegetative ground
cover and species diversity on the
abandoned coal refuse site.

(c) *Soil resources and other
vegetation-support material information
requirements.* Your permit application
must provide information about soil or
other vegetation-support material for the
permit area, and the adjacent area if
required, that is sufficient to assure us
that suitable soil materials will be
available to achieve the vegetative cover
and species diversity approved in the
reclamation plan.

(d) *Maps: general requirements.* Your
permit application must include the
information required under § 779.24 of
this chapter except as follows:

(1) If you do not plan to blast, in lieu
of the information required by
§ 779.24(d) of this chapter, you must
provide the location, with identification

of the current use, of all buildings on and within 300 feet of the proposed permit;

(2) If you plan to blast, you must provide the location, with identification of the current use, of all buildings on and within 1000 feet of the proposed permit area, provided that this additional map coverage may be submitted with the anticipated blast design required in § 816.61 of this chapter; and

(3) The requirements of § 779.24(f) of this chapter, do not apply.

(e) *Cross sections, maps, and plans.* Your permit application must include the information required under § 779.25 of this chapter, except as follows:

(1) For operations on steep slopes, instead of the information required by § 779.25(a)(3) of this chapter, you must include typical cross sections showing the projected ground line underlying the refuse, adjacent ground line, and the surface of the refuse;

(2) Instead of the information required by § 779.25(a)(4) of this chapter, you must include cross sections, maps, and plans that show the coal crop lines and the strike and dip of coal seams that outcrop within the proposed permit area; and

(3) The requirements of § 779.25(a)(6) of this chapter do not apply.

§ 786.13 Information on operation plans.

(a) *General requirements.* Your permit application must contain a description of the abandoned coal refuse remining operations proposed to be conducted during the life of the operations within the proposed permit area. At a minimum, you must include the following:

(1) A narrative description of the type and method of proposed engineering techniques, the anticipated annual and total tonnage of refuse removed and/or reprocessed, and the major equipment to be used for all aspects of those operations; and

(2) Separate narratives for removal operations and reprocessing operations. Your narratives must identify the facilities associated with those operations and explain the construction, modification, use, maintenance, and removal of the facilities associated with removal operations and with reprocessing operations (unless retention of such facilities is necessary for the postmining land use as specified in part 829 of this chapter). The facilities include:

(i) Dams, embankments, and other impoundments;

(ii) Refuse handling, storage, and transportation areas and structures;

(iii) Refuse and noncoal waste screening, removal, handling, storage, transportation, and disposal areas and structures;

(iv) Reprocessing equipment and associated facilities;

(v) Removal equipment and associated facilities; and

(vi) Water and air pollution control facilities.

(b) *Existing structures.* Your permit application must include the information required under § 780.12 of this chapter. The description of existing structures must indicate whether the structures are associated with removal operations or with reprocessing operations.

(c) *Blasting.* Your permit application must include information required under § 780.13 of this chapter if you plan to blast during the abandoned coal refuse remining operation.

(d) *Maps and plans.* Your permit application must contain maps and plans as follows:

(1) Maps and plans that show the lands proposed to be affected throughout the life of the operation and any change in a facility or feature to be caused by the proposed operation, if the facility or feature was identified by the maps and plans required by paragraphs (d) and (e) of § 786.12.

(2) Maps and plans that delineate removal areas and reprocessing areas must include the information required by § 780.14 of this chapter, except as follows:

(i) Instead of the information required by § 780.14(b)(4) of this chapter, the maps and plans must show the areas for storing, sorting, sizing and blending of coal refuse; the areas for reprocessing refuse; any waste redispersion areas associated with a refuse removal or on-site reprocessing operation; and the areas for loading the refuse product or coal for sale;

(ii) Instead of the information required by § 780.14(b)(5) of this chapter, the maps and plans must show the storage areas for vegetation-support material, rock waste, noncombustible noncoal waste, and combustible noncoal waste;

(iii) Instead of the information required by § 780.14(b)(11) of this chapter, the maps and plans must show the location of each sediment pond and permanent water impoundment, coal reprocessing waste bank, coal reprocessing waste dam, or embankment;

(3) The preparation and certification requirements of § 780.14(c) of this chapter apply to the maps and plans prepared in accordance with this paragraph.

(e) *Air pollution control plan.* Your permit application must contain the information required by § 780.15 of this chapter, except that the fugitive dust control plan required by § 780.15(b)(2) of this chapter must comply with the requirements of § 829.95 of this chapter, instead of the requirements of § 816.95 of this chapter.

(f) *Fish and wildlife information.* Your permit application must contain the information required by § 780.16 of this chapter.

(g) *Protection of public parks and historic places.* Your application must contain the information required by § 780.31 of this chapter.

§ 786.14 Information on reclamation plans.

(a) *General requirements.* Your permit application must contain a plan for reclamation of the lands within the proposed permit area, showing how you will comply with section 515 of the Act, subchapter K of this Chapter, and the environmental protection performance standards of the regulatory program. The plan must include, at a minimum, all of the information for the proposed permit area as follows:

(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 that we require to be covered by a performance bond under subchapter J of this chapter, with supporting calculations for the estimate;

(3) A plan for grading, soil stabilization, and compacting, with contour maps or cross sections that show anticipated final surface configuration of the proposed permit area, in accordance with § 829.102 of this chapter;

(4) A plan for removal, storage, and redistribution of soil or other vegetation-support material that meets the requirements of § 829.22 of this chapter. We may require chemical and physical analyses, field-site trials, or greenhouse tests if we determine them necessary or desirable for demonstrating the suitability of the vegetation-support materials;

(5) A plan for revegetation as required by § 829.111 of this chapter, including mulching techniques that you plan to use and measures you propose for determining revegetation success;

(6) A description of the measures that you will use for maximizing the use and conservation of solid fuel resources as required in § 816.59 of this chapter;

(7) A description of measures that you will use for ensuring that all debris, acid-forming and toxic-forming materials, and materials constituting a

fire hazard are disposed of in accordance with the requirements of §§ 829.89 and 829.102 of this chapter, and a description of contingency plans that you will use to preclude sustained combustion of such materials;

(8) A description, including appropriate cross sections and maps, of the measures that you will use to seal or manage any mine openings, and to plug, case, or manage exploration holes, other bore holes, wells, and other openings occurring within the proposed permit area, in accordance with § 829.13 of this chapter, and

(9) A description of steps that you will take to comply with the applicable requirements of the Clean Air Act (42 U.S.C. 7401 *et seq.*), the Clean Water Act (33 U.S.C. 1251 *et seq.*), and other applicable Federal and State air and water quality laws and regulations and health and safety standards.

(b) *Postmining land use.* Your application must contain a narrative description of the existing land uses, with photographs, and a plan describing the proposed use, following reclamation, of the land within the proposed permit area. You must also include in your plan a copy of any comments regarding the proposed postmining land use made by persons who hold equitable or legal title to the surface of the proposed permit area, or made by State or local agencies that would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation. The description of the proposed land use must explain:

(1) How you will achieve the proposed postmining land use and the necessary support activities that you will need to achieve this land use; and

(2) The consideration that you have given to making all of the proposed abandoned coal refuse remining operations consistent with Surface owner plans and applicable State and local land use plans and programs.

(c) *Ponds, impoundments, banks, dams, and embankments.* Your application must contain the plans required under § 780.25 of this chapter. These plans must be consistent with the requirements of part 829 of this chapter.

(d) *Surface mining near underground mining.* If your abandoned coal refuse remining operation is within 500 feet of an underground mine, your application must describe the measures that you will use to comply with § 816.79 of this chapter.

(e) *Diversions.* Your application must contain descriptions, including maps and cross sections, of stream channel diversions and other diversions that you will construct within the proposed

permit area to comply with § 816.43 of this chapter.

§ 786.15 Information on hydrology.

(a) *Reprocessing operations.* Your application for a reprocessing operation must contain:

(1) All of the information required under § 780.21(a) through (g) and (i) through (j) of this chapter; and

(2) A hydrologic reclamation plan with maps and descriptions, indicating how you plan to meet the relevant requirements of § 829.41 of this chapter. The plan must be specific to the local hydrologic conditions and must address any potential adverse impacts to the hydrologic balance identified in the probable hydrologic consequences (PHC) determination required by § 780.21(f). You must include preventive and remedial measures and the steps you will take during refuse removal and reclamation through bond release to:

(i) Minimize disturbances to the hydrologic balance within the permit and adjacent areas;

(ii) Prevent material damage outside the permit area;

(iii) Meet applicable Federal and State water quality laws and regulations; and

(iv) Protect the rights of present water users;

(v) Avoid acid or toxic drainage;

(vi) Prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to stream flow;

(vii) Provide water-treatment facilities when needed;

(viii) Control drainage; and

(ix) Protect or replace rights of present water users.

(b) *Removal Operations.* (1) Your application for a removal operation must meet the following requirements for hydrologic information and analysis:

(i) A determination of the probable hydrologic consequences (PHC), as required by § 780.21(f), of expected enhancements or adverse impacts to the hydrologic balance on or off the permit area that may result from the coal refuse removal operation and subsequent reclamation;

(ii) Any data you collect for the PHC determination must comply with the requirements for sampling and analyses of § 780.21(a) of this chapter;

(iii) You may prepare a narrative PHC determination based on existing relevant hydrologic information. For example, you may derive the required baseline descriptions of seasonal flow rates from modeling and other techniques, as provided by § 780.21(d) of this chapter, from data and findings of other mining operations in the area,

or even from point-source discharge permits obtained under the National Pollutant Discharge Elimination System (NPDES);

(iv) A discussion of expected enhancements of the local hydrologic balance on or off the permit area, including discussion of the decreased loads of pollutants achievable through improved water quality, decreased flow, or infiltration of water, or some combination thereof. You must support this discussion with data from paragraphs (b)(1)(ii) or (b)(1)(iii) of this section and identification of the Best Management Practices (BMPs) that you propose under paragraph (b)(3) of this section.

(v) The supplemental information requirements in § 780.21(b)(3) of this chapter and the ground- and surface-water monitoring plan requirements of §§ 780.21(i) and (j) of this chapter will apply if the PHC identifies adverse impacts to the hydrologic balance on or off the permit area. Also, if the PHC identifies adverse impacts to legitimate water uses, the requirements of § 780.21(e) of this chapter pertaining to alternative water source information will apply.

(2) We must comply with the requirements of § 780.21(g) for a cumulative hydrologic impact assessment.

(3) You must include a hydrologic reclamation plan (HRP) with maps and descriptions and identification of specific BMPs, including sediment control measures, and any additional information that we may require in order to ensure compliance with the requirements of subchapter K, part 829.

(4) You must monitor discharges as required by a National Pollutant Discharge Elimination System permit obtained under 40 CFR part 434.

§ 786.16 Information on geology and refuse.

(a) Your application must include geologic information, if appropriate, and refuse information in sufficient detail to assist us in 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 ground- and surface-water monitoring is necessary; whether reclamation can be accomplished; and whether the operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

(b) We may require the collection and analysis of additional refuse or geologic information if we determine it to be necessary to protect the hydrologic

balance or to meet the performance standards of this chapter.

§ 786.17 Information on roads and support facilities.

(a) *Relocation or use of public roads.* Your application must contain the information required by § 780.33 of this chapter.

(b) *Road systems.* Your application must contain the information required by § 780.37 of this chapter, and must be in accordance with § 816.150 of this chapter.

(c) *Support facilities.* Your application must contain the information required by § 780.38 of this chapter, and must be in accordance with § 816.181 of this chapter.

4. Part 829 is added to read as follows:

PART 829—SPECIAL PERMANENT PROGRAM PERFORMANCE STANDARDS-ABANDONED COAL REFUSE REMINING OPERATIONS

Sec.	
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829.133	Postmining land use.

Authority: 30 U.S.C. 1201 *et seq.*

§ 829.1 Scope.

This part sets forth special environmental protection performance standards for abandoned coal refuse remining operations. Unless otherwise specified in this part, the requirements of this part apply to removal and reprocessing operations. As used throughout this part, the pronouns “we”, “our”, and “us” refer to the regulatory authority and the pronouns “you” and “your” refer to the applicant and operator.

§ 829.2 Objectives.

This part is intended to ensure that you conduct your abandoned coal refuse remining operations in a manner that

preserves and enhances environmental and other values in accordance with the Surface Mining Control and Reclamation Act of 1977, as amended by the Energy Policy Act of 1992.

§ 829.3 General requirements.

(a) If you intend to conduct abandoned coal refuse remining operations, you must obtain a permit in accordance with part 786 of this chapter and comply with the bond and insurance requirements of subchapter J of this chapter.

(b) You must conduct your operation in accordance with the following requirements of part 816 of this chapter:

- (1) § 816.43 Diversions.
- (2) § 816.47 Hydrologic balance: Discharge Structures.
- (3) § 816.57 Hydrologic Balance: Stream buffer zones.
- (4) § 816.59 Coal Recovery.
- (5) § 816.61 Use of explosives: General requirements.

(6) § 816.62 Use of explosives: Pre-blasting survey.

(7) § 816.64 Use of explosives: Blasting schedule.

(8) § 816.66 Use of explosives: Blasting signs, warnings, and access control.

(9) § 816.67 Use of Explosives: Control of adverse effects.

(10) § 816.68 Use of Explosives: Records of blasting operations.

(11) § 816.79 Protection of underground mining.

(12) § 816.87 Coal mine waste: Burning and burned waste utilization.

(13) § 816.97 Protection of fish, wildlife, and related environmental values.

(14) § 816.131 Cessation of operations: Temporary.

(15) § 816.132 Cessation of operations: Permanent.

(16) § 816.150 Roads.

(17) § 816.151 Roads: Primary.

(18) § 816.180 Utility installations.

(19) § 816.181 Support facilities.

(c) In addition, you must conduct your operations in accordance with the requirements of this part.

§ 829.10 Information collection.

The collections of information contained in part 829 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029-XXX2. We will use the information collected to ensure that permittees conducting abandoned coal refuse remining operations will meet appropriate performance standards. A federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information

unless it displays a currently valid OMB control number. Response is required to obtain a benefit in accordance with Public Law 95–87. Send comments regarding burden estimates or any other aspect of this collection of information, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, Room 202–SIB, 1951 Constitution Avenue, NW., Washington, DC 20240.

§ 829.11 Signs and markers.

You must comply with the requirements of § 816.11 of this chapter except that, instead of the requirements of § 816.22 of this chapter referenced in § 816.11(f), the requirements of § 829.22 apply.

§ 829.13 Casing and sealing of drill holes, portals or other openings.

You must comply with the requirements of §§ 817.13, 817.14, and 817.15 of this chapter except that, instead of the requirements of § 817.41 of this chapter referenced in §§ 817.13 and 817.15 regarding the use of monitoring holes or other openings for water wells, the requirements of § 829.41 apply.

§ 829.22 Soils and other vegetation-support material.

(a) You must select readily available vegetation-support materials and demonstrate to us that such material is suitable to support the level of vegetation required by § 829.111. You may use material from off site as vegetation-support material. You must remove and stockpile material from the remining site or off site that is to be used for vegetation support, before any other surface disturbance. You must distribute the vegetation support material as approved by us.

(b) You must apply nutrients and soil amendments to the redistributed material when necessary to establish the vegetative cover.

§ 829.41 Hydrologic-balance protection.

(a) *Reprocessing operations.* You must comply with the hydrologic balance requirements of §§ 816.41 and 816.42 of this chapter for reprocessing operations except that the requirement in § 816.41(b)(2) to restore recharge capacity does not apply. Also, instead of the requirements of § 780.21(h) of this chapter referenced in § 816.41, the requirements in § 786.15(a)(2) of this chapter apply.

(b) *Removal operations.* (1) You must comply with the hydrologic balance requirements of §§ 816.41 and 816.42 of

this chapter for removal operations except as follows:

(i) Instead of the requirements in sections of 30 CFR part 780 referenced in §§ 816.41 and 816.42, the requirements of § 786.15(b) of this chapter apply;

(ii) The requirement of § 816.41(b)(2) of this chapter to restore recharge capacity does not apply;

(iii) Ground- and surface-water monitoring must be conducted in accordance with the requirements of § 786.15(b) of this chapter; and

(iv) Discharges into an underground mine are prohibited unless we expressly authorize such discharge and you meet the following requirements:

(A) The requirements of § 816.41(i) of this chapter are met;

(B) The permit application includes baseline ground-water and geologic information in sufficient detail to describe the geologic and hydrologic conditions associated with the underground mine works;

(C) The determination of Probable Hydrologic Consequences addresses the impacts that the discharges will have on ground- and surface-water users and the potential for seepage or drainage of water from the underground works;

(D) The hydrologic reclamation plan includes measures to remediate potential impacts to ground- and surface-water users and potential impacts from seepage and drainage out of the underground works; and

(E) The ground- and surface-water monitoring plans provide for the monitoring of the ground- and surface-water systems that could be impacted by the underground discharges.

(2)[Reserved]

§ 829.45 Hydrologic balance: Sediment control measures.

You must comply with the requirements of § 816.45 of this chapter except that, instead of the requirements to §§ 816.102 and 816.111(b) referenced in § 816.45, the requirements in §§ 829.102 and 829.111(b) apply.

§ 829.46 Hydrologic balance: Siltation structures.

You must comply with the requirements of § 816.46 of this chapter, except as currently suspended. However, instead of the requirements of § 816.42 and the requirements for siltation structures and spill ways incorporating §§ 816.49, and 816.49(a)(9) referenced in § 816.46 of this chapter, the requirements of §§ 829.41(b) and 829.49 apply.

§ 829.49 Impoundments.

You must comply with the impoundments requirements of

§§ 816.49 and 816.56 of this chapter except that:

(a) Instead of the requirements of § 780.25 referenced in § 816.49 of this chapter, the requirements of § 786.14(c) of this chapter apply.

(b) Upon completion of the operation, you may only retain permanent impoundments on reclaimed coal refuse:

(1) Where the impoundment is not confined by a constructed dam, e.g., is a dug-out type impoundment; or

(2) You have removed the abandoned coal refuse from within the confines of an impounding structure located on non-steep slope land, and the remaining or reconstructed impounding structure meets the appropriate design, construction, inspection, and certification requirements of § 816.49 of this chapter.

§ 829.81 Redeposition and handling of coal mine waste, and coal refuse piles.

You must place coal mine waste from an abandoned coal refuse site or generated as a result of a coal refuse remining operation according to the standards of §§ 816.81, 816.83, and 816.84 of this chapter, except:

(a) We may alter, on a site-specific basis, the design certification, foundation requirements, and inspection requirements of §§ 816.81(c), 816.81(d), and 816.83(d) of this chapter.

(b) If you take refuse reprocessing waste or waste generated by removal operations and deposit it adjacent to the abandoned coal refuse site, you must meet the standards of §§ 816.81, 816.83, and 816.84 of this chapter.

(c) You may not take coal mine waste generated by removal operations and deposit it in underground mine works unless you meet the requirements of §§ 816.81(f) and 829.41(b)(1)(i) of this chapter.

(d) Instead of the cover requirement at § 816.83(c)(4) of this chapter, you must cover or treat refuse piles generated by abandoned coal refuse remining operations with sufficient noncombustible and nontoxic material to prevent sustained combustion, as required under § 829.102(d), and to support revegetation, as required under § 829.111.

(e) Instead of the vegetation removal and impoundment requirements of § 816.83(c)(1) and (c)(3) of this chapter, you must comply with the requirements of §§ 829.22 and 829.49.

(f) Instead of the topsoil and subsoil storage requirements of § 816.22 of this chapter referenced in § 816.83(c) of this chapter, you must comply with the requirements of § 829.22.

§ 829.89 Disposal of noncoal mine wastes.

(a) You must comply with the requirements of § 816.89(a) and (b) of this chapter except that you must cover and revegetate the site in accordance with the requirements of § 829.111 instead of the requirements of §§ 816.111 through 816.116 of this chapter referenced by § 816.89(b).

(b) Instead of the requirements of § 816.89(c) of this chapter, you may dispose in refuse piles any noncombustible, noncoal waste encountered during refuse remining and/or any combustion byproducts generated from coal burning facilities.

(c) You must demonstrate that the disposal will not adversely affect final site reclamation or public health and safety and that it accords with other applicable provisions of State and Federal law.

§ 829.95 Stabilization of surface areas.

(a) You must protect and stabilize all exposed surface areas to provide equal or better erosion control and air pollution control than existed before disturbing the abandoned coal refuse site.

(b) In areas where refuse has been regraded and covered with vegetation-support material, if rills and gullies form, you must fill, regrade, or otherwise stabilize with vegetation support material, and reseed or replant the areas, whenever such rills and gullies 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.

§ 829.99 Slides and other damage.

You must comply with the requirements of § 816.99(b) of this chapter for abandoned coal refuse remining operations.

§ 829.100 Contemporaneous reclamation.

Your reclamation efforts, including but not limited to, grading, soil or vegetation-support material replacement, and revegetation, on all disturbed land that is reaffected by on-site abandoned coal refuse remining operations must occur as contemporaneously as practicable with the abandoned coal refuse remining operations. Before we approve your permit, you must provide a schedule that meets this requirement for contemporaneous reclamation in a manner we determine is acceptable.

§ 829.102 Grading.

(a) You must conduct grading activities:

(1) According to this section and § 829.81, and

(2) According to the schedule we approve in the reclamation plan required under § 786.14(a) of this chapter.

(b) You must grade disturbed areas to:

(1) 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 or greater, and to prevent slides;

(2) Minimize erosion and water pollution both on and off the site; and

(3) Support the approved postmining land use.

(c) You may grade land adjacent to the abandoned coal refuse remining operations to blend with the refuse extraction area to achieve the postmining land use and stability requirements under paragraph (b)(1) of this section. If you do so, you must remove and stockpile the vegetation-support material from the affected adjacent land for use as required by § 829.22.

(d) You must adequately cover or treat the coal seams and combustible materials exposed, used, or produced during mining with noncombustible and nontoxic materials to prevent sustained combustion.

(e) You may use cut-and-fill terraces 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.

(f) You may leave small depressions if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation and are compatible with the stability of the reclaimed site.

(g) You must conduct preparation of final-graded surfaces in a manner that

minimizes erosion and provides a surface for soils and other vegetation-support material that will minimize slippage.

(h) You must eliminate highwalls and other rock cuts encountered during operations to the maximum extent technically practical in accordance with the following criteria:

(1) All spoil, rock waste and refuse waste generated or encountered by the operation must be used to backfill the highwalls and rock cuts to the extent that use of the material satisfies the stability requirements of paragraph (b)(1) of this section; and

(2) Any highwall and rock-cut remnant must be stable and not pose a hazard to the public health and safety or to the environment. You must demonstrate to our satisfaction that the remnant is stable.

(i) You must comply with these standards when conducting abandoned coal refuse remining activities on steep slopes:

(1) You must not place the following materials on steep slopes below the elevation of the abandoned refuse:

(i) Spoil and rock waste;

(ii) Waste materials of any type;

(iii) Debris, including that from clearing and grubbing; and

(iv) Abandoned or disabled equipment.

(2) You must conduct refuse extraction and grading operations on steep slopes in a manner to prevent instability of the refuse area, and must comply with the following:

(i) You must extract the refuse by horizontal lifts starting at the highest elevation of the refuse pile; and

(ii) You must not remove the toe of the refuse pile until the extraction by horizontal lifts has progressed to the elevation of the toe.

(3) We may waive, in writing, the requirements of paragraphs (i)(2)(i) and (i)(2)(ii), if the permit demonstrates with stability analyses that the refuse will retain a static safety factor of 1.3 during extraction activities.

§ 829.111 Revegetation, standards for success, and bond liability period.

(a) Revegetation timing and mulching must comply with §§ 816.111(b) through (d), 816.113 and 816.114 of this chapter.

(b) 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, you must establish a vegetative cover that is in accordance with the approved permit and reclamation plan and that is:

(1) Effective and permanent;

(2) Comprised of species native to the area or of introduced species when we approve the use of those species as desirable and necessary to achieve the approved postmining land use;

(3) Capable of stabilizing the surface from erosion as required by § 829.95.

(c) You must establish a vegetative ground cover that is no less than the ground cover that existed before redistribution, as required by § 816.116(b)(5) of this chapter.

(d) The requirements of § 816.116(c) of this chapter concerning revegetation responsibility periods and evaluation of revegetation success are applicable to abandoned coal refuse remining operations with the following modifications:

(1) For operations in areas with an average annual precipitation greater than 26.0 inches, the revegetation responsibility period will be two full years rather than the times specified in § 816.116(c)(2); and

(2) For operations in areas with an average annual precipitation of 26.0 inches or less, the revegetation responsibility period will be five full years rather than the times specified in § 816.116(c)(2).

§ 829.133 Postmining land use.

You must restore all areas disturbed by abandoned coal refuse remining operations to a condition capable of supporting the use that the abandoned coal refuse site was capable of supporting before commencement of abandoned coal refuse remining operations, or a higher or better use.

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