(e) Approval requirements for activities within 100 feet of a perennial or intermittent stream. Before approving any surface mining activities that would disturb the surface of land subject to the buffer requirement of §816.57(a)(1) of this chapter, the regulatory authority must find in writing that—

(1) Avoiding disturbance of the surface of land within 100 feet of the stream either is not reasonably possible or is not necessary to meet the fish and wildlife and hydrologic balance protection requirements of the regulatory program; and

(2) The measures proposed under paragraphs (c)(2) and (c)(3) of this section constitute the best technology currently available to—

(i) Prevent the contribution of additional suspended solids to streamflow or runoff outside the permit area to the extent possible, as required by §§780.21(h) and 816.41(d)(1) of this chapter; and

(ii) Minimize disturbances and adverse impacts on fish, wildlife, and related environmental values to the extent possible, as required by §§780.16(b) and 816.97(a) of this chapter.

(f) Relationship to the Clean Water Act.

(1) In all cases, your application must identify the authorizations and certifications that you anticipate will be needed under sections 401, 402, and 404 of the Clean Water Act, 33 U.S.C. 1341, 1342, and 1344, and describe the steps that you have taken or will take to procure those authorizations and certifications.

(2) The regulatory authority will process your application and may issue the permit before you obtain all necessary authorizations and certifications under the Clean Water Act, 33 U.S.C. 1251 et seq., provided your application meets all applicable requirements of subchapter G of this chapter. However, issuance of a permit does not authorize you to initiate any activities for which Clean Water Act authorizations or certifications is required. Information submitted and analyses conducted under subchapter G of this chapter may inform the agency responsible for authorizations and certifications under sections 401, 402, and 404 of the Clean Water Act, 33 U.S.C. 1341, 1342, and 1344, but they are not a substitute for the reviews, authorizations, and certifications required under those sections of the Clean Water Act.

[73 FR 75877, Dec 12, 2008]

§ 780.29 Diversions.

Each application shall contain descriptions, including maps and cross sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 30 CFR 816.43 of this chapter.


§ 780.31 Protection of publicly owned parks and historic places.

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

(1) To prevent adverse impacts, or

(2) If a person has valid existing rights, as determined under §761.16 of this chapter, or if joint agency approval is to be obtained under §761.17(d) of this chapter, to minimize adverse impacts.

(b) The regulatory authority may require the applicant to protect historic or archeological properties listed on or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. Appropriate mitigation and treatment measures may be required to be taken after permit issuance provided that the required measures are completed before the properties are affected by any mining operation.


§ 780.33 Relocation or use of public roads.

Each application shall describe, with appropriate maps and cross-sections, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under §761.14 of this chapter, the applicant seeks to have the regulatory authority approve—

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

[44 FR 15357, Mar. 13, 1979, as amended at 64 FR 70838, Dec. 17, 1999]  

§ 780.35 Disposal of excess spoil.

(a) If you, the permit applicant, propose to generate excess spoil as part of
your operation, you must include the following items in your application—

(1) Demonstration of minimization of excess spoil. A demonstration, prepared to the
satisfaction of the regulatory author-
yty, that the operation has been
designed to minimize, to the extent possible, the volume of excess spoil
that the operation will generate, thus
ensuring that spoil is returned to the
mined-out area to the extent possible,
taking into consideration applicable
regulations concerning restoration of
the approximate original contour, safety,
stability, and environmental pro-
tection and the needs of the proposed
postmining land use.

(2) Capacity demonstration. A dem-
onstration, prepared to the satisfaction of the regulatory author-
yty, that the designed maximum cumulative volume of all proposed excess spoil fills within
the permit area is no larger than the
capacity needed to accommodate the anticipated cumulative volume of ex-
cess spoil that the operation will gen-
erate, as approved by the regulatory author-
yty under paragraph (a)(1) of this
section.

(3) Discussion of how you will address impacts to perennial and intermittent
streams and related environmental values.
You must design the operation to avoid placement of excess spoil in or within
100 feet of a perennial or intermittent
stream to the extent possible. If avoid-
ance is not possible, you must—

(i) Explain, to the satisfaction of the regulatory author-
yty, why an alternative that does not involve placement of excess spoil in or within 100 feet of a perennial or intermittent
stream is not reasonably possible.

(ii) Identify a reasonable range of alter-
 natives that vary with respect to the
number, size, location, and configu-
rative of proposed fills. This provision does not require identification of all
potential alternatives. You need iden-
tify only those reasonably possible al-
ternatives that are likely to differ sig-
ificantly in terms of impacts on fish,
wildlife, and related environmental
values. An alternative is reasonably
possible if it meets all the following
criteria:

(A) The alternative conforms to the
safety, engineering, design, and con-
struction requirements of the regu-

latory program;

(B) The alternative is capable of
being done after consideration of cost,
logistics, and available technology.
The fact that one alternative may cost
somewhat more than a different alter-
native does not necessarily warrant ex-
clusion of the more costly alternative
from consideration. However, an alter-
native generally may be considered un-
reasonable if its cost is substantially
greater than the costs normally associ-
ated with this type of project.

(C) The alternative is consistent with
the coal recovery provisions of §816.59
of this chapter.

(iii) Analyze the impacts of the alter-
natives identified in paragraph (a)(3)(ii)
of this section on fish, wildlife, and re-
lated environmental values. The anal-
ysis must consider impacts on both ter-
restrial and aquatic ecosystems.

(A) For every alternative that pro-
poses placement of excess spoil in a pe-
rennial or intermittent stream, the
analysis must include an evaluation of
impacts on the physical, chemical, and
biological characteristics of the stream
downstream of the proposed fill. In-
cluding seasonal variations in tempera-
ture and volume, changes in stream
turbidity or sedimentation, the degree
to which the excess spoil may intro-
duce or increase contaminants, and the
effects on aquatic organisms and the
wildlife that is dependent upon the
stream.

(B) If you have prepared an analysis
of alternatives for the proposed fill
under 40 CFR 230.10 to meet Clean
Water Act requirements, you may ini-
tially submit a copy of that analysis
with your application in lieu of the
analysis required by paragraph
(a)(3)(iii)(A) of this section. The regu-

latory authority will determine the ex-
tent to which that analysis satisfies
the analytical requirements of para-
graph (a)(3)(iii)(A) of this section.