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the approved postmining land use, in which case the final grading may include a terrace of adequate width to ensure the safety, stability, and erosion control necessary to implement the postmining land-use plan.

(h) Small depressions may be constructed if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation.

(i) Permanent impoundments may be approved if they meet the requirements of §§ 817.49 and 817.56 and if they are suitable for the approved postmining land use.

(j) Preparation of final-graded surfaces shall be conducted in a manner that minimizes erosion and provides a surface for replacement of topsoil that will minimize slippage.

(k) The postmining slope may vary from the approximate original contour when approval is obtained from the regulatory authority for—

(1) A variance from approximate original contour requirements in accordance with § 785.16 of this chapter; or

(2) Incomplete elimination of highwalls in previously mined areas in accordance with § 817.106.

(1) Regrading of settled and revegetated fills to achieve approximate original contour at the conclusion of underground mining activities shall not be required if the conditions of paragraph (1)(1) or (1)(2) of this section are met.

(1)(i) Settled and revegetated fills shall be composed of spoil or non-acid- or non-toxic-forming underground development waste.

(ii) The spoil or underground development waste shall not be located so as to be detrimental to the environment, to the health and safety of the public, or to the approved postmining land use.

(iii) Stability of the spoil or underground development waste shall be demonstrated through standard geotechnical analysis to be consistent with backfilling and grading requirements for material on the solid bench (1.3 static safety factor) or excess spoil requirements for material not placed on a solid bench (1.5 static safety factor).

(iv) The surface of the spoil or underground development waste shall be vegetated according to § 817.116, and surface runoff shall be controlled in accordance with § 817.43.

(2) If it is determined by the regulatory authority that disturbance of the existing spoil or underground development waste would increase environmental harm or adversely affect the health and safety of the public, the regulatory authority may allow the existing spoil or underground development waste pile to remain in place. The regulatory authority may require stabilization of such spoil or underground development waste in accordance with the requirements of paragraphs (1)(1)(i) through (1)(1)(iv) of this section.

[48 FR 23370, May 24, 1983, as amended at 48 FR 41735, Sept. 16, 1983]

§ 817.106 Backfilling and grading: Previously mined areas.

(a) Remining operations on previously mined areas that contain a pre-existing highwall shall comply with the requirements of §§ 817.102 through 817.107 of this chapter, except as provided in this section.

(b) The requirements of § 817.102(a) (1) and (2) requiring that elimination of highwalls shall not apply to remining operations where the volume of all reasonably available spoil is demonstrated in writing to the regulatory authority to be insufficient to completely backfill the reaffected or enlarged highwall. The highwall shall be eliminated to the maximum extent technically practical in accordance with the following criteria:

(1) All spoil generated by the remining operation and any other reasonably available spoil shall be used to backfill the area. Reasonably available spoil in the immediate vicinity of the remining operation shall be included within the permit area.

(2) The backfill shall be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability.

(3) Any highwall remnant shall be stable and not pose a hazard to the

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public health and safety or to the environment. The operator shall demonstrate, to the satisfaction of the regulatory authority, that the highwall remnant is stable.

(4) Spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbances will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.

[48 FR 41735, Sept. 16, 1983, as amended at 51 FR 41737, Nov. 18, 1986]

§ 817.107 Backfilling and grading: Steep slopes.

(a) Underground mining activities on steep slopes shall be conducted so as to meet the requirements of §§ 817.102–817.106 and the requirements of this section.

(b) The following materials shall not be placed on the downslope:

(1) Spoil.

(2) Waste materials of any type.

(3) Debris, including that from clearing and grubbing.

(4) Abandoned or disabled equipment.

(c) Land above the highwall shall not be disturbed unless the regulatory authority finds that this disturbance will facilitate compliance with the environmental protection standards of this subchapter and the disturbance is limited to that necessary to facilitate compliance.

(d) Woody materials shall not be buried in the backfilled area unless the regulatory authority determines that the proposed method for placing woody material within the backfill will not deteriorate the stable condition of the backfilled area.

[48 FR 23370, May 24, 1983, as amended at 48 FR 41735, Sept. 16, 1983]

§ 817.111 Revegetation: General requirements.

(a) The permittee shall establish on regraded areas and on all other disturbed areas except water areas and surface areas of roads that are approved as part of the postmining land use, as vegetative cover that is in accordance with the approved permit and reclamation plan and that is—

(1) Diverse, effective, and permanent;

(2) Comprised of species native to the area, or of introduced species where desirable and necessary to achieve the approved postmining land use and approved by the regulatory authority;

(3) At least equal in extent of cover to the natural vegetation of the area; and

(4) Capable of stabilizing the soil surface from erosion.

(b) The reestablished plant species shall—

(1) Be compatible with the approved postmining land use;

(2) Have the same seasonal characteristics of growth as the original vegetation;

(3) Be capable of self-regeneration and plant succession;

(4) Be compatible with the plant and animal species of the area; and

(5) Meet the requirements of applicable State and Federal seed, poisonous and noxious plant, and introduced species laws or regulations.

(c) The regulatory authority may grant exception to the requirements of paragraphs (b) (2) and (3) of this section when the species are necessary to achieve a quick-growing, temporary, stabilizing cover, and measures to establish permanent vegetation are included in the approved permit and reclamation plan.

(d) When the regulatory authority approves a cropland postmining land use, the regulatory authority may grant exceptions to the requirements of paragraphs (a) (1), (3), (b) (2), and (3) of this section. The requirements of part 823 of this chapter apply to areas identified as prime farmland.

[48 FR 40161, Sept. 2, 1983]

§ 817.113 Revegetation: Timing.

Disturbed areas shall be planted during the first normal period for favorable planting conditions after replacement of the plant-growth medium. The normal period for favorable planting is that planting time generally accepted locally for the type of plant materials selected.

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