

§ 817.133 Postmining land use.

(a) *General.* All disturbed areas shall be restored in a timely manner to conditions that are capable of supporting—

(1) The uses they were capable of supporting before any mining; or

(2) Higher or better uses.

(b) *Determining premining uses of land.* The premining uses of land to which the postmining land use is compared shall be those uses which the land previously supported, if the land has not been previously mined and has been properly managed. The postmining land use for land that has been previously mined and not reclaimed shall be judged on the basis of the land use that existed prior to any mining: *Provided that*, if the land cannot be reclaimed to the land use that existed prior to any mining because of the previously mined condition, the postmining land use shall be judged on the basis of the highest and best use that can be achieved which is compatible with surrounding areas and does not require the disturbance of areas previously unaffected by mining.

(c) *Criteria for alternative postmining land uses.* Higher or better uses may be approved by the regulatory authority as alternative postmining land uses after consultation with the landowner or the land management agency having jurisdiction over the lands, if the proposed uses meet the following criteria:

(1) There is a reasonable likelihood for achievement of the use.

(2) The use does not present any actual or probable hazard to public health and safety, or threat of water diminution or pollution.

(3) The use will not—

(i) Be impractical or unreasonable;

(ii) Be inconsistent with applicable land use policies or plans;

(iii) Involve unreasonable delay in implementation; or

(iv) Cause or contribute to violation of Federal, State, or local law.

(d) *Approximate original contour: Criteria for variance.* Surface coal mining operations that meet the requirements of this paragraph may be conducted under a variance from the requirement to restore disturbed areas to their approximate original contour, if the following requirements are satisfied:

(1) The regulatory authority grants the variance under a permit issued in accordance with § 785.16 of this chapter.

(2) The alternative postmining land use requirements of paragraph (c) of this section are met.

(3) All applicable requirements of the Act and the regulatory program, other than the requirement to restore disturbed areas to their approximate original contour, are met.

(4) After consultation with the appropriate land use planning agencies, if any, the potential use is shown to constitute an equal or better economic or public use.

(5) The proposed use is designed and certified by a qualified registered professional engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site.

(6) After approval, where required, of the appropriate State environmental agencies, the watershed of the permit and adjacent areas is shown to be improved.

(7) The highwall is completely backfilled with spoil material, in a manner which results in a static factor of safety of at least 1.3, using standard geotechnical analysis.

(8) Only the amount of spoil as is necessary to achieve the postmining land use, ensure the stability of spoil retained on the bench, and meet all other requirements of the Act and this chapter is placed off the mine bench. All spoil not retained on the bench shall be placed in accordance with §§ 817.71 through 817.74 of this chapter.

(9) The surface landowner of the permit area has knowingly requested, in writing, that a variance be granted, so as to render the land, after reclamation, suitable for an industrial, commercial, residential, or public use (including recreational facilities).

(10) Federal, State, and local government agencies with an interest in the proposed land use have an adequate period in which to review and comment on the proposed use.

[48 FR 33905, Sept. 1, 1983]