OHIO DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINES AND RECLAMATION

****POLICY/PROCEDURE DIRECTIVE****

Regulatory 97-2
(which replaces Policy/Procedure Directive Regulatory 93-2)

Subject: Disposal of Excess Spoil on Unpermitted Area Adjacent to a Mining Permit

Effective: **2-27-97**

Purpose: To clarify the eligibility requirements and performance standards applicable to off-permit placement of excess spoil.

Excess spoil from an active mining operation may be used to reclaim an adjacent State Abandoned Mined Land(AML) or Federal AML project under a direct negotiated, no-cost, or competitively bid contract executed pursuant to Ohio Revised Code Section 1513.27 or 1513.37. The adjacent unreclaimed AML project area must be referenced in the regulatory permit application and identified on the permit map. However, the unreclaimed AML project area will not be included in the permit acreage, will not be subject to the requirements for performance bond or acreage fees, and will not delay or otherwise affect bond release on the permitted area. For details on direct negotiated mine operator contracts see PPD Regulatory 97-1 .

The spoil material removed from the permitted area and placed in the unreclaimed AML project area must not be necessary for the achievement of approximate original contour on the permitted area, nor can the placement of spoil off-permit facilitate the mining operation on the permitted area, nor can the placement of spoil off-permit exceed that necessary to achieve approximate original contour on the AML project area. In accordance with paragraph (H) of rule 1501:13-9-07, the excess spoil must be placed in an environmentally and technically sound manner, and in an area where it will not destroy or degrade features of environmental value.

The final configuration of the off-permit AML area shall be suitable for the post-reclamation land use and compatible with the natural surroundings. Other specific standards for placement of the spoil on abandoned mined lands will be contained in the construction contract.

Construction of a fill on the off-permit AML area will be allowed only in the event that an engineer certifies that construction of a fill is necessary to establish positive drainage. Such fills shall include diversions or underdrains as necessary to control erosion, prevent water infiltration into the fill, and ensure stability. Routine backfilling and grading of a pit on the off-permit area, however, will not be considered fill construction.

When the Division becomes aware of a proposal for off-permit spoil placement, an environmental review of the area to be affected will be conducted by an Environmental Specialist (ES) to determine whether any of the following features exist on the unreclaimed area: wetlands or stable impoundments with good water quality; federal or state endangered or threatened plant or animal species, or their critical habitats; plant communities or habitat types unique to the region or

possessing particular value or productivity; or any other desirable environmental or socioeconomic quality of high value, utility, or uniqueness. If the unreclaimed area is located in a floodplain or within 1000 feet of the normal waterline of a designated wild or scenic river, this information shall be noted in the environmental review and considered in the design process.

The environmental review findings will be documented by the ES and, if any of the features described above exist, the ES shall recommend mitigatory or enhancement measures, if appropriate, or avoidance of the area. Such recommendations shall, at a minimum, conform with protections afforded these areas by state or federal law. The ES may consult with state or federal agencies, such as the ODNR Division of Natural Areas and Preserves or Division of Wildlife, when developing recommendations for mitigation. The recommended mitigatory or enhancement measures shall be included in the contract specifications.

Upon receipt of the project proposal and map from the permittee, the Application Manager will forward the map and project description to the DMR Archeologist Specialist for coordination of review with the State Historic Preservation Office (SHPO) in accordance with the Letter of Understanding dated 5-29-86 between the Division and the SHPO. The proposed project may be withdrawn by the company from consideration if it is determined that the off-permit spoil placement may adversely affect an existing or potentially significant cultural, historic or archaeologic site.

The Division's Field Team Inspector will be responsible for monitoring the area to ensure contract compliance. Such monitoring will be conducted as described in the construction contract.

In the event of contract noncompliance by the operator, the inspector will notify the Field Team Leader. Based upon recommendations of Team Leader and the Field Team Manager, the Chief may determine whether to:

1. terminate the contract and assess liquidated damages in the amount of $2,500 per acre affected by the operator,

2. terminate the contract and issue a Notice of Violation requiring the operator to revise the permit boundary to include any off-site acreage affected by the operator to facilitate mining and to post bond in the amount of $2,500 per acre, or

3. issue a field order to stop work.

In the event of forfeiture of the coal mining permit with which an off-site AML area is associated, any off-site area which was improperly used to facilitate mining on the permit area will be included in the bond forfeiture. For all other AML area, the Division will proceed with the appropriate contract remedies, including contract termination and liquidated damages.

Lisa J. Morris, Chief

LJM/RSB/ds