



United States Department of the Interior

OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
WASHINGTON, D.C. 20240



MAY 28 1993

Memorandum

To: W. Hord Tipton
Acting Director

From: Brent Wahlquist (Sgd) BRENT WAHLQUIST
Assistant Director, Reclamation and Regulatory Policy

Subject: Highwalls Created During the Implementation of an Alternative
Postmining Land Use

This is in response to an April 8, 1993, memorandum from the Assistant Director, Field Operations requesting policy guidance on the above subject. That request stemmed from the attached March 10, 1993, memorandum from the Big Stone Gap Field Office (BGSFO) Director asking the same in response to the attached February 22, 1993, letter from the Virginia Division of Mined Land Reclamation (VDMLR).

The case referred to by the VDMLR involves a gas drilling company that proposes to reexpose a highwall by developing a gas well and well pad (light commercial postmining land use) on a portion of a permit area which has been backfilled and graded to eliminate the highwall and for which a Phase II bond release has been granted and revegetation is waiting expiration of the five year extended liability period. The VDMLR wants to know whether the final bond can be released without future reclamation liability to permittee or the gas drilling company. The BGSFO is concerned about the risk of releasing the final bond prior to actual implementation of the alternative postmining land use, especially if the alternative land use never materializes and about whether highwalls can ever be created and left prior to final bond release.

I want to emphasize that the following analysis is in context of the instant case which relies heavily on the understanding that backfilling, grading, highwall elimination and initial revegetation requirements of the Virginia program have been met at the proposed gas well site. Given this, the only apparent obstacle to final bond release is expiration of the five year extended

liability period to ensure postmining land use revegetation success. We have previously held that the extended liability period for revegetation is not applicable where revegetation is not necessary due to implementation of an alternative commercial postmining land use activity. Accordingly, if the permittee were to secure approval of an alternative postmining land use for well installation and support activities and revegetation under the original postmining land use was no longer applicable to this alternative postmining land use, the final bond could then be released. Moreover, further support for granting a final bond release in a situation like this can be found under the State counterpart to 30 CFR 800.13(d)(2). That section provides that implementation of an alternative postmining land use approved under the State counterpart to 30 CFR 816.133 which is beyond the control of the permittee, need not be covered by the bond.

Once the bond was released, regulatory jurisdiction would appropriately terminate since in accordance with 30 CFR 700.11(d)(1)(ii) the full bond release would be based on a determination that all applicable requirements imposed under the Virginia program have been successfully completed. If, however, the alternative postmining land use is not implemented as approved and the five year extended liability period has not run, this would be a misrepresentation of a material fact and in accordance with 30 CFR 700.11(d)(2), jurisdiction would need to be reasserted.

Please let me know if you have any concerns with my analysis of this issue.

Attachment

cc: Allen D. Klein
Assistant Director, Field Operations