

## **SUPPORTING STATEMENT**

Refuse Piles and Impoundment Structures, Recordkeeping and Reporting Requirements (pertain to surface coal mines and surface work areas of underground coal mines), 30 CFR Section 77.215(j), 77.215-2, 77.215-3, 77.215-4, 77.216-2, 77.216-3, 77.216-4, and 77.216-5

### **A. Justification**

**1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

Sections 101 and 508 of the Federal Mine Safety and Health Act of 1977 (P.L. 95-164)(the Act), 30 U.S.C. §§ 811 and 957, authorizes the Secretary to develop, promulgate, and revise improved health or safety standards for the protection of life and the prevention of injuries in coal or other mines, and to issue such regulations as deemed necessary to carry out the provisions of the Act.

30 CFR Part 77, Subpart C, sets forth regulations for surface installations. More specifically, the sections cited in the title of this supporting statement addresses refuse piles (30 CFR 30.215), and impoundments (30 CFR 77.216). Impoundments are structures that are used to impound water, sediment, or slurry or any combination of materials; and refuse piles are deposits of coal mine waste that are removed during mining operations or separated from mined coal and deposited on the surface. The failure of these structures can have a devastating affect on a community. To avoid or minimize such disasters, standards exist for the construction and maintenance of these structures, for annual certifications, for certification for hazardous refuse piles, for the frequency of inspections, and the methods of abandonment for impoundments and impounding structures.

**2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.**

MSHA reviews and approves impoundment and refuse pile plans for safety concerns after all hydrologic, hydraulic and engineering data has been evaluated and the plans are determined to be adequate. The mine operators use the approved plans and approved

October 13, 2004

revisions to plans for constructing and improving impoundment structures and refuse piles. In addition, MSHA reviews fire extinguishing plans as well as abandonment plans for impoundments and refuse piles to ensure that they conform with prudent engineering and safety practices, and when implemented will eliminate existing hazardous conditions.

MSHA reviews the annual status report in order to determine that the structure is being built according to the originally submitted and approved engineering plan. The annually required certification by a registered professional engineer confirms that its rock and earth dam is being built according to approved prudent engineering practices. The certification also declares that no deviations or modifications have occurred to these plans which may be detrimental to the impounding structure's stability and safety.

The weekly physical examination and instrument monitoring are required in order to ascertain by the companies and by the Secretary of Labor that physical forces such as erosion (due to an inordinate amount of precipitation) or uncontrolled or increased seepage through an earth dam has not resulted. Such conditions and other factors can be very detrimental to the structure and subsequently dangerous to any inhabitants downstream. Weekly instrument records show fluctuations of such important factors as the dam's phreatic line (an internal flow network and water table) which is very important to determine possible failure surfaces and pore pressures to calculate the stability of the structure. To minimize the information collection, with respect to impoundments, the most recent regulation changes allow operators to apply for longer inspection intervals for sites that have been in place for a long time.

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.**

No improved information technology has been identified that would reduce the burden. However in order to comply with the Government Paperwork Elimination Act, mine operators may retain the records using in whatever method they choose, which may include utilizing computer technology. With respect to refuse piles, reports contain, among other things, a topographic map showing the present and proposed maximum extent of the refuse

October 13, 2004

pile and an area 500 feet around the perimeter; a statement of whether or not the refuse pile is burning; a description of measures taken to prevent water from being impounded by the refuse pile or contained within; a cross section of the length and width of the refuse pile at intervals to show the approximate original ground surface and any other information pertaining to the stability of the pile.

With respect to impoundments, reports contain, among other things, changes in the geometry of the impounding structure for the reporting period; data showing the minimum, maximum and present depth of the impoundment; the storage capacity of the impounding structure; and the volume of the impounded water, sediment, or slurry for the reporting period. Because these reports are voluminous and the mine maps so large, mine operators often send in hard copies.

**4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.**

MSHA has reviewed its regulatory position with the Office of Surface Mining (OSM), U.S. Department of the Interior, and the Environmental Protection Agency. As a result of this review, it was determined that there was no duplication in the reporting and record keeping burden imposed by these agencies. MSHA met with representatives of OSM prior to promulgation of their regulations to assure that there was no conflict.

**5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.**

This information does not have a significant impact on small businesses or other small entities. However, MSHA has made available on our web-site various sources of information, such as "Technical Assistance," "Best Practices," and an "Accident Prevention" site. To assist with compliance, these provide tips and general information on various topics.

**6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.**

The absence of abandonment plans, the lack of inspections and monitoring of instruments, and less frequently required certifications would allow unsafe conditions to go undetected. This can quickly result in detrimental conditions for the dam and subsequently threaten any inhabitants and property downstream

October 13, 2004

with a potential disaster as well as potentially placing miners at risk.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- requiring respondents to report information to the agency more often than quarterly;
- requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;
- requiring respondents to submit more than an original and two copies of any document;
- requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;
- in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;
- requiring the use of a statistical data classification that has not been reviewed and approved by OMB;
- that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or
- requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

In the event of a mine emergency, the mine operator may have to provide MSHA with reporting information more frequently than quarterly. This collection of information is otherwise consistent with the guidelines in 5 C.F.R. § 1320.5.

8. If applicable, provide a copy and identify the data and page number of publication in the Federal Register of the agency's notice, required by 5 CFR Section 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and record keeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years -- even

October 13, 2004

if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

In accordance with 5 CFR 1320.8(d), MSHA will publish the proposed information collection requirements in the Federal Register, notifying the public that these information collection requirements are being reviewed in accordance with the Paperwork Reduction Act of 1995, and giving interested persons 60 days to submit comments.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

MSHA does not provide payments or gifts to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

There is no assurance of confidentiality provided to respondents.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

There are no questions of a sensitive nature.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.
- If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.

October 13, 2004

- Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.

The frequency of response is annual for each mine operator with an impoundment or a hazardous refuse pile. MSHA's records show that in FY 2004, there are approximately 740 impounding structures and 30 hazardous refuse piles, for a total of 770 sites.

All plans or revisions would be developed by a mining company engineer, who earns an average of \$58.96/hour (based on data from **U.S. Coal Mine Salaries, Wages, & Benefits - 2002 Survey Results**).

The burden hours and cost estimates for all annual plan requirements from the coal mining industry were computed as follows:

Impoundment Plans, Refuse Pile Plans, and Revisions:

- (1)MSHA estimates that it takes 1,300 hours to prepare a new impoundment plan, and 50 new plans are submitted per year.  
 (2)MSHA estimates that it takes 16 hours for a new refuse pile plan, and 20 new refuse pile plans are submitted per year.  
 (3)MSHA estimates that it takes 5 hours to prepare a revision to an existing impoundment plan, and 100 revisions are submitted per year. Therefore:

50 new impoundment plans/yr x 1,300 hours	=	65,000 hours
20 new refuse pile plans/yr x 16 hours	=	320 hours
100 revised impoundment plans/yr x 5 hours	=	<u>500 hours</u>
<b>Total Burden Hours</b>		<b>65,820 hours</b>

$$65,820 \text{ hours} \times \$58.96/\text{hr} = \$3,880,747$$

Fire Extinguishing Plans: This is not an applicable category. There are no more refuse facility or impoundment fires.

Abandonment Plans: MSHA estimates that an average of 25 abandonment plans are developed each year, and that it takes 8 hours to prepare such a plan by a company engineer. Therefore:

25 abandonment plans x 8 hours/plan	=	<b>200 hours</b>
-------------------------------------	---	------------------

October 13, 2004

200 hours x \$58.96/hr

Annual Status Report and Certification: MSHA estimates that 100 existing impoundments and 10 existing refuse piles will undergo changes that are required to be reported on the annual certification. Such revisions would take a company engineer approximately 2 hours per report.  
Therefore:

110 revisions x 1 report x 2 hours	=	<b>220 hours</b>
220 hours x \$58.96/hr	=	\$12,971

Weekly Inspections and Instrumentation Monitoring: MSHA's revised regulation 30CFR 77.216-3 allows for alternative inspection time frames other than the required seven days. The revision allows flexibility to reduce the frequency of inspections and corresponding recordkeeping requirements, for impoundments which have a demonstrated record of safety. Approval by the District Manager is based on the hazard potential for the structure as well as a demonstrated history of performance.

MSHA estimates that the qualified miner, who inspects an impoundment, earns approximately \$28.66/hour. It is estimated that the inspections where mine operators have installed monitoring instruments, will take an average of 3 hours every 3 weeks (17 inspections per year) to perform this function. Sites without monitoring instruments will be able to be inspected and recorded in approximately 2 hours every 3 weeks (17 inspections per year). An estimated 40 percent, or 296 sites of the total 740, have monitoring instruments installed.  
Therefore:

296 impoundments w/monitoring instruments		
x 17 insp./yr. X 3 hours	=	<b>15,096 hrs</b>
15,096 hours x \$28.66/hr	=	\$432,651
444 impoundments w/o monitoring instruments		
x 17 insp./yr x 2 hours	=	<b>15,096 hrs</b>
15,096 hours x \$28.66/hr	=	\$432,651
<b><u>SALARY COST GRAND TOTAL:</u></b>	=	<b><u>\$4,770,812</u></b>

October 13, 2004

Cite/ Reference	Total Respon dents	Frequenc y	Total Respon ses	Average Time per Response	Burden
77.215 New Refuse Piles	20	Annual	20	16 hrs	320 hrs
Abandonment Plans	25	Annual	25	8 hrs	200 hrs
77.216 New Impoundments	50	Annual	50	1,300 hrs	65,000 hrs
Revisions	100	Annual	100	5 hrs	500 hrs
Annual Certifica- tions (existing)	110	Annual	110	2 hrs	220 hrs
Inspections w/monitoring Instruments	296	On Occasion	5,032	3 hrs	15,096 hrs
w/o mon. Instruments	444	On Occasion	7,548	2 hrs	15,096 hrs
<b>TOTALS</b>	////////	////////	<b>12,885</b>	<b>8 hrs</b>	<b>96,432 hrs</b>

13. Provide an estimate of the total annual cost burden to respondents or record-keeper resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

- The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life); and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.

October 13, 2004

- If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.
- Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

MSHA does not anticipate that there will be any costs associated with this information collection other than those designated under number 12 above.

14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.

The average hourly wage for an MSHA specialist (GS-12/5) is \$28.73/hour (based on Office of Personnel Management, 2004 General Schedule). MSHA estimates that it takes a specialist approximately 2 hours to review an average report for an impoundment or a hazardous refuse pile.

Impoundment Plans, Refuse Pile Plans, and Revisions:

(1) MSHA estimates that it takes 2 months (320 hours) to review and approve an average impoundment plan, and 50 new impoundment plans are received per year.

(2) It takes approximately 4 hours to review a revision to an existing impoundment plan, and 100 revisions are submitted per year.

(3) A review of refuse pile plans is estimated to take approximately 2 hours, and 20 new plans are received per year. Therefore:

50 new plans/yr x 320 hours	=	16,000 hours
16,000 hours x \$28.73/hr	=	\$459,680
100 revisions/yr x 4 hours	=	400 hours

October 13, 2004

400 hours x 28.73/hr	=		<b>\$11,492</b>
20 new refuse piles/yr x 2 hours	=	40 hours	
40 hours x \$28.73/hr	=		<b>\$1,149</b>

Abandonment Plans: MSHA receives an average of 25 abandonment plans per year. Safety specialists estimate that it takes approximately 1 hour to review and prepare a response for one of these plans. Therefore:

25 reports x 1 hour	=	25 hours	
25 hours x \$28.73/hr	=		<b>\$718</b>

Annual Status Report and Certification: 100 existing impoundments and 10 existing refuse piles will undergo changes that are required to be reported. The review will take approximately 1 hour per report. Therefore:

110 reports x 1 hour	=	110 hours	
110 x \$28.73/hr	=		<b>\$3,160</b>

TOTAL FEDERAL HOURS = 16,575 Hours

FEDERAL COST GRAND TOTAL = **\$476,199**

15. Explain the reasons for any program changes or adjustments reporting in Items 13 or 14 of the OMB Form 83-I.

The increase of 679 burden hours (from 95,753 to 96,432) is due to an increase in the number of responses (from 12,428 to 12,885), which is due to an increase in the number of new impoundment structures (from 711 to 740) for this time period.

16. For collections of information whose results will be published, outline plans for tabulation, and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

MSHA does not intend to publish the results of this information collection.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

MSHA is not seeking approval to either display the expiration date for OMB approval of this information collection.

October 13, 2004

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submission," of OMB 83-I.

MSHA is not requesting an exception to the certification statement.

**B. Collection of Information Employment Statistical Methods**

Collection of information does not employ statistical methods.

**Federal Mine Safety & Health Act of 1977,  
Public Law 91-173,  
as amended by Public Law 95-164\***

# An Act

**TITLE I--GENERAL  
MANDATORY SAFETY AND HEALTH STANDARDS**

SEC. 101. (a) The Secretary shall by rule in accordance with procedures set forth in this section and in accordance with section 553 of title 5, United States Code (without regard to any reference in such section to sections 556 and 557 of such title), develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal or other mines.

(1) Whenever the Secretary, upon the basis of information submitted to him in writing by an interested person, a representative of any organization of employers or employees, a nationally recognized standards-producing organization, the Secretary of Health, Education, and Welfare, the National Institute for Occupational Safety and Health, or a State or political subdivision, or on the basis of information developed by the Secretary or otherwise available to him, determines that a rule should be promulgated in order to serve the objectives of this Act, the Secretary may request the recommendation of an advisory committee appointed under section 102(c). The Secretary shall provide such an advisory committee with any proposals of his own or of the Secretary of Health, Education, and Welfare, together with all pertinent factual information developed by the Secretary or the Secretary of Health, Education, and Welfare, or otherwise available, including the results of research, demonstrations, and experiments. An advisory committee shall submit to the Secretary its recommendations regarding the rule to be promulgated within 60 days from the date of its appointment or within such longer or shorter period as may be prescribed by the Secretary, but in no event for a period which is longer than 180 days. When the Secretary receives a recommendation, accompanied by appropriate criteria, from the National Institute for Occupational Safety and Health that a rule be promulgated, modified, or revoked, the Secretary must, within 60 days after receipt thereof, refer such recommendation to an advisory committee pursuant to this paragraph, or publish such as a proposed rule pursuant to paragraph (2), or publish in the Federal Register his determination not to do so, and his reasons therefor. The Secretary shall be required to request the recommendations of an advisory committee appointed under section 102(c) if the rule to be promulgated is, in the discretion of the Secretary which shall be final, new in effect or application and has significant economic impact.

(2) The Secretary shall publish a proposed rule promulgating, modifying, or revoking a mandatory health or safety standard in the Federal Register. If the Secretary determines that a rule should be proposed and in connection therewith has appointed an advisory committee as provided by paragraph (1), the Secretary shall publish a proposed rule, or the reasons for his determination not to publish such rule, within 60 days following the submission of the advisory committee's recommendation or the expiration of the period of time prescribed by the Secretary in such submission. In either event, the Secretary shall afford interested persons a period of 30 days after any such publication to submit written data or comments on the proposed rule. Such comment period may be extended by the Secretary upon a finding of good cause, which the Secretary shall publish in the Federal Register. Publication shall include the text of such rules proposed in their entirety, a comparative text of the proposed changes in existing rules, and shall include a comprehensive index to the rules, cross-referenced by subject matter.

(3) On or before the last day of the period provided for the submission of written data or comments under paragraph (2), any interested person may file with the Secretary written objections to the proposed mandatory health or safety standard, stating the grounds therefor and requesting a public hearing on such objections. Within 60 days after the last day for filing such objections, the Secretary shall publish in the Federal Register a notice specifying the mandatory health or safety standard to which objections have been filed and a hearing requested, and specifying a time and place for such hearing. Any hearing under this subsection for the purpose of hearing relevant information shall commence within 60 days after the date of publication of the notice of hearing. Hearings required by this subsection shall be conducted by the Secretary, who may prescribe rules and make rulings concerning procedures in such hearings to avoid unnecessary cost or delay. Subject to the need to avoid undue delay, the Secretary shall provide for procedures that will afford interested parties the right to participate in the hearing, including the right to present oral statements and to offer written comments and data. The Secretary may require by subpoena the attendance of witnesses and the production of evidence in connection with any proceeding initiated under this section. If a person refuses to obey a subpoena under this subsection, a United States district court within the jurisdiction of which a proceeding under this subsection is conducted may, upon petition by the Secretary, issue an order requiring compliance with such subpoena. A transcript shall be taken of any such hearing and shall be available to the public.

(4)(A) Within 90 days after certification of the record of the hearing held pursuant to paragraph (3), the Secretary shall by rule promulgate, modify, or revoke such mandatory health or safety standards, and publish his reasons therefor.

(B) In the case of a proposed mandatory health or safety standard to which objections requesting a public hearing have not been filed, the Secretary, within 90 days after the period for filing such objections has expired, shall by rule promulgate, modify, or revoke such mandatory standards, and publish his reasons therefor.

(C) In the event the Secretary determines that a proposed mandatory health or safety standard should not be promulgated he shall, within the times specified in subparagraphs (A) and (B) publish his reasons for his determination.

(5) Any mandatory health or safety standard promulgated as a final rule under this section shall be effective upon publication in the Federal Register unless the Secretary specifies a later date.

(6)(A) The Secretary, in promulgating mandatory standards dealing with toxic materials or harmful physical agents under this subsection, shall set standards which most adequately assure on the basis of the best available evidence that no miner will suffer material impairment of health or functional capacity even if such miner has regular exposure to the hazards dealt with by such standard for the period of his working life. Development of mandatory standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the miner, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the mandatory health or safety standard promulgated shall be expressed in terms of objective criteria and of the performance desired.

(B) The Secretary of Health, Education, and Welfare, as soon as possible after the date of enactment of the Federal Mine Safety and Health Amendments Act of 1977 but in no event later than 18 months after such date and on a continuing basis thereafter, shall, for each toxic material or harmful physical agent which is used or found in a mine, determine whether such material or agent is potentially toxic at the concentrations in which it is used or found in a mine. The Secretary of Health, Education, and Welfare shall submit such determinations with respect to such toxic substances or harmful physical agents to the Secretary. Thereafter, the Secretary of Health, Education, and Welfare shall submit to the Secretary all pertinent criteria regarding any such substances determined to be toxic or any such harmful agents as such criteria are developed. Within 60 days after receiving any criteria in accordance with the preceding sentence relating to a toxic material or harmful physical agent which is not adequately covered by a mandatory health or safety standard promulgated under this section, the Secretary shall either appoint an advisory committee to make recommendations with respect to a mandatory health or safety standard covering such material or agent in accordance with paragraph (1), or publish a proposed rule promulgating such a mandatory health or safety standard in accordance with paragraph (2), or shall publish his determination not to do so.

(7) Any mandatory health or safety standard promulgated under this subsection shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that miners are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure. Where appropriate, such mandatory standard shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring miner exposure at such locations and intervals, and in such manner so as to assure the maximum protection of miners. In addition, where appropriate, any such

October 13, 2004

mandatory standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the operator at his cost, to miners exposed to such hazards in order to most effectively determine whether the health of such miners is adversely affected by such exposure. Where appropriate, the mandatory standard shall provide that where a determination is made that a miner may suffer material impairment of health or functional capacity by reason of exposure to the hazard covered by such mandatory standard, that miner shall be removed from such exposure and reassigned. Any miner transferred as a result of such exposure shall continue to receive compensation for such work at no less than the regular rate of pay for miners in the classification such miner held immediately prior to his transfer. In the event of the transfer of a miner pursuant to the preceding sentence, increases in wages of the transferred miner shall be based upon the new work classification. In the event such medical examinations are in the nature of research, as determined by the Secretary of Health, Education, and Welfare, such examinations may be furnished at the expense of the Secretary of Health, Education, and Welfare. The results of examinations or tests made pursuant to the preceding sentence shall be furnished only to the Secretary or the Secretary of Health, Education, and Welfare, and, at the request of the miner, to his designated physician.

(8) The Secretary shall, to the extent practicable, promulgate separate mandatory health or safety standards applicable to mine construction activity on the surface.

(9) No mandatory health or safety standard promulgated under this title shall reduce the protection afforded miners by an existing mandatory health or safety standard.

(b)(1) The Secretary shall provide, without regard to the requirements of chapter 5, title 5, United States Code, for an emergency temporary mandatory health or safety standard to take immediate effect upon publication in the Federal Register if he determines (A) that miners are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful, or to other hazards, and (B) that such emergency standard is necessary to protect miners from such danger.

(2) A temporary mandatory health or safety standard shall be effective until superseded by a mandatory standard promulgated in accordance with the procedures prescribed in paragraph (3) of this subsection.

(3) Upon publication of such standard in the Federal Register, the Secretary shall commence a proceeding in accordance with section 101 (a), and the standards as published shall also serve as a proposed rule for the proceeding. The Secretary shall promulgate a mandatory health or safety standard under this paragraph no later than nine months after publication of the emergency temporary standard as provided in paragraph (2).

(c) Upon petition by the operator or the representative of miners, the Secretary may modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that an alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such

standard, or that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. Upon receipt of such petition the Secretary shall publish notice thereof and give notice to the operator or the representative of miners in the affected mine, as appropriate, and shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of such operator or representative or other interested party, to enable the operator or the representative of miners in such mine or other interested party to present information relating to the modification of such standard. Before granting any exception to a mandatory safety standard, the findings of the Secretary or his authorized representative shall be made public and shall be available to the representative of the miners at the affected mine. The Secretary shall issue a decision incorporating his findings of fact therein, and send a copy thereof to the operator or the representative of the miners, as appropriate. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code.

(d) Any person who may be adversely affected by a mandatory health or safety standard promulgated under this section may, at any time prior to the sixtieth day after such standard is promulgated, file a petition challenging the validity of such mandatory standard with the United States Court of Appeals for the District of Columbia Circuit or the circuit wherein such person resides or has his principal place of business, for a judicial review of such standard. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The filing of such petition shall not, unless otherwise ordered by the court, operate as a stay of the standard. No objection that has not been urged before the Secretary shall be considered by the court, unless the failure or neglect to urge such objection shall be excused for good cause shown. The validity of any mandatory health or safety standard shall not be subject to challenge on the grounds that any of the time limitations in this section have been exceeded. The procedures of this subsection shall be the exclusive means of challenging the validity of a mandatory health or safety standard.

(e) The Secretary shall send a copy of every proposed mandatory health or safety standard or regulation at the time of publication in the Federal Register to the operator of each coal or other mine and the representative of the miners at such mine and such copy shall be immediately posted on the bulletin board of the mine by the operator or his agent, but failure to receive such notice shall not relieve anyone of the obligation to comply with such standard or regulation.

## REGULATIONS

SEC. 508. The Secretary, the Secretary of Health, Education, and Welfare, and the Panel are authorized to issue such regulations as each deems appropriate to carry out any provision of this Act.

### **30 CFR § 77.215**

#### **Refuse piles; construction requirements.**

(j) All fires in refuse piles shall be extinguished, and the method used shall be in accordance with a plan approved by the District Manager. The plan shall contain as a minimum, provisions to ensure that only those persons authorized by the operator, and who have an understanding of the procedure to be used, shall be involved in the extinguishing operation.

### **30 CFR § 77.215-2**

#### **Refuse piles; reporting requirements.**

(a) The proposed location of a new refuse pile shall be reported to and acknowledged in writing by the District Manager prior to the beginning of any work associated with the construction of the refuse pile.

(b) Before May 1, 1976, for existing refuse piles, or within 180 days from the date of acknowledgment of the proposed location of a new refuse pile, the person owning, operating or controlling a refuse pile shall submit to the District Manager a report in triplicate which contains the following:

(1) The name and address of the person owning, operating or controlling the refuse pile; the name associated with the refuse pile; the identification number of the refuse pile as assigned by the District Manager; and the identification number of the mine or preparation plant as assigned by MSHA.

(2) The location of the refuse pile indicated on the most recent USGS 7 1/2 minute or 15 minute topographic quadrangle map, or a topographic map of equivalent scale if a USGS map is not available.

(3) A statement of the construction history of the refuse pile, and a statement indicating whether the refuse pile has been abandoned in accordance with a plan approved by the District Manager.

(4) A topographic map showing at a scale not to exceed 1 inch=400 feet, the present and proposed maximum extent of the refuse pile and the area 500 feet around the proposed maximum perimeter.

(5) A statement of whether or not the refuse pile is burning.

(6) A description of measures taken to prevent water from being impounded by the refuse pile or contained within the refuse pile.

(7) At a scale not to exceed 1 inch=100 feet, cross sections of the length and width of the refuse pile at sufficient intervals to show the approximate original ground surface, the present configuration and the proposed maximum extent of the refuse pile, and mean sea level elevations at significant points.

(8) Any other information pertaining to the stability of the pile which may be required by the District Manager.

(c) The information required by paragraphs (b)(4) through (b)(8) of this section shall be reported every twelfth month from the date of original submission for those refuse piles which the District Manager has determined can present a hazard until the District Manager notifies the operator that the hazard has been eliminated.

(Secs. 101, 508, Pub. L. 91-173, 83 Stat. 745, 803 (30 U.S.C. 811, 957), Pub. L. No. 96-511, 94 Stat. 2812 (44 U.S.C. 3501 et seq.))

[40 FR 41776, Sept. 9, 1975, as amended at 47 FR 14696, Apr. 6, 1982; 57 FR 7471, Mar. 2, 1992; 60 FR 33719, June 29, 1995]

### **30 CFR § 77.215-3**

#### **Refuse piles: certification.**

(a) Within 180 days following written notification by the District Manager that a refuse pile can present a hazard, the person owning, operating, or controlling the refuse pile shall submit to the District Manager a certification by a registered engineer that the refuse pile is being constructed or has been modified in accordance with current, prudent engineering practices to minimize the probability of impounding water and failure of such magnitude as to endanger the lives of miners.

(b) After the initial certification required by this section and until the District Manager notifies the operator that the hazard has been eliminated, certification shall be submitted every twelfth month from the date of the initial certification.

(c) Certifications required by paragraphs (a) and (b) of this section shall include all information considered in making the certification.

(Secs. 101, 508, Pub. L. 91-173, 83 Stat. 745, 803 (30 U.S.C. 811, 957))

[40 FR 41776, Sept. 9, 1975, as amended at 57 FR 7471, Mar. 2, 1992]

October 13, 2004

**30 CFR § 77.215-4**

**Refuse piles; abandonment.**

When a refuse pile is to be abandoned, the District Manager shall be notified in writing, and if he determines it can present a hazard, the refuse pile shall be abandoned in accordance with a plan submitted by the operator and approved by the District Manager. The plan shall include a schedule for its implementation and describe provisions to prevent burning and future impoundment of water, and provide for major slope stability.

(Secs. 101, 508, Pub. L. 91-173, 83 Stat. 745, 803 (30 U.S.C. 811, 957), Pub. L. No. 96-511, 94 Stat. 2812 (44 U.S.C. 3501 et seq.))

[40 FR 41776, Sept. 9, 1975, as amended at 47 FR 14696, Apr. 6, 1982; 60 FR 33719, June 29, 1995]

**30 CFR § 77.216-2**

**Water, sediment, or slurry impoundments and impounding structures; minimum plan requirements; changes or modifications; certification.**

(a) The plan specified in [§77.216](#), shall contain as a minimum the following information:

(1) The name and address of the persons owning, operating or controlling the impoundment or impounding structure; the name associated with the impoundment or impounding structure; the identification number of the impounding structure as assigned by the District Manager; and the identification number of the mine or preparation plant as assigned by MSHA.

(2) The location of the structure indicated on the most recent USGS 7 1/2 minute or 15 minute topographic quadrangle map, or a topographic map of equivalent scale if a USGS map is not available.

(3) A statement of the purpose for which the structure is or will be used.

(4) The name and size in acres of the watershed affecting the impoundment.

(5) A description of the physical and engineering properties of the foundation materials on which the structure is or will be constructed.

- (6) A statement of the type, size, range, and physical and engineering properties of the materials used, or to be used, in constructing each zone or stage of the impounding structure; the method of site preparation and construction of each zone; the approximate dates of construction of the structure and each successive stage; and for existing structures, such history of construction as may be available, and any record or knowledge of structural instability.
- (7) At a scale not to exceed 1 inch=100 feet, detailed dimensional drawings of the impounding structure including a plan view and cross sections of the length and width of the impounding structure, showing all zones, foundation improvements, drainage provisions, spillways, diversion ditches, outlets, instrument locations, and slope protection, in addition to the measurement of the minimum vertical distance between the crest of the impounding structure and the reservoir surface at present and under design storm conditions, sediment or slurry level, water level and other information pertinent to the impoundment itself, including any identifiable natural or manmade features which could affect operation of the impoundment.
- (8) A description of the type and purpose of existing or proposed instrumentation.
- (9) Graphs showing area-capacity curves.
- (10) A statement of the runoff attributable to the probable maximum precipitation of 6-hour duration and the calculations used in determining such runoff.
- (11) A statement of the runoff attributable to the storm for which the structure is designed and the calculations used in determining such runoff.
- (12) A description of the spillway and diversion design features and capacities and calculations used in their determination.
- (13) The computed minimum factor of safety range for the slope stability of the impounding structure including methods and calculations used to determine each factor of safety.
- (14) The locations of surface and underground coal mine workings including the depth and extent of such workings within the area 500 feet around the perimeter, shown at a scale not to exceed one inch=500 feet.
- (15) Provisions for construction surveillance, maintenance, and repair of the impounding structure.
- (16) General provisions for abandonment.
- (17) A certification by a registered engineer that the design of the impounding structure is in accordance with current, prudent engineering practices for the maximum volume of water, sediment, or slurry which can be impounded therein and for the passage of runoff from the designed storm which exceeds the capacity of the impoundment; or, in lieu of the certification, a report indicating what additional investigations, analyses, or improvement work are necessary

before such a certification can be made, including what provisions have been made to carry out such work in addition to a schedule for completion of such work.

(18) Such other information pertaining to the stability of the impoundment and impounding structure which may be required by the District Manager.

(b) Any changes or modifications to plans for water, sediment, or slurry impoundments or impounding structures shall be approved by the District Manager prior to the initiation of such changes or modifications.

(Secs. 101, 508, Pub. L. 91-173, 83 Stat. 745, 803 (30 U.S.C. 811, 957))

[40 FR 41777, Sept. 9, 1975]

### **30 CFR § 77.216-3**

#### **Water, sediment, or slurry impoundments and impounding structures; inspection requirements; correction of hazards; program requirements.**

(a) All water, sediment, or slurry impoundments that meet the requirements of [§77.216\(a\)](#) shall be examined as follows:

(1) At intervals not exceeding 7 days, or as otherwise approved by the District Manager, for appearances of structural weakness and other hazardous conditions.

(2) All instruments shall be monitored at intervals not exceeding 7 days, or as otherwise approved by the District Manager.

(3) Longer inspection or monitoring intervals approved under this paragraph (a) shall be justified by the operator based on the hazard potential and performance of the impounding structure, and shall include a requirement for inspection immediately after a specified rain event approved by the District Manager.

(4) All inspections required by this paragraph (a) shall be performed by a qualified person designated by the person owning, operating, or controlling the impounding structure.

(b) When a potentially hazardous condition develops, the person owning, operating or controlling the impounding structure shall immediately:

(1) Take action to eliminate the potentially hazardous condition;

(2) Notify the District Manager;

(3) Notify and prepare to evacuate, if necessary, all coal miners from coal mine property which may be affected by the potentially hazardous conditions; and

October 13, 2004

(4) Direct a qualified person to monitor all instruments and examine the structure at least once every eight hours, or more often as required by an authorized representative of the Secretary.

(c) After each examination and instrumentation monitoring referred to in paragraphs (a) and (b) of this section, each qualified person who conducted all or any part of the examination or instrumentation monitoring shall promptly record the results of such examination or instrumentation monitoring in a book which shall be available at the mine for inspection by an authorized representative of the Secretary, and such qualified person shall also promptly report the results of the examination or monitoring to one of the persons specified in paragraph (d) of this section.

(d) All examination and instrumentation monitoring reports recorded in accordance with paragraph (c) of this section shall include a report of the action taken to abate hazardous conditions and shall be promptly signed or countersigned by at least one of the following persons:

(1) The mine foreman;

(2) The assistant superintendent of the mine;

(3) The superintendent of the mine;

(4) The person designated by the operator as responsible for health and safety at the mine.

(e) Before May 1, 1976, the person owning, operating, or controlling a water, sediment, or slurry impoundment which meets the requirements of [§77.216\(a\)](#) shall adopt a program for carrying out the requirements of paragraphs (a) and (b) of this section. The program shall be submitted for approval to the District Manager. The program shall include as a minimum:

(1) A schedule and procedures for examining the impoundment and impounding structure by a designated qualified person;

(2) A schedule and procedures for monitoring any required or approved instrumentation by a designated qualified person;

(3) Procedures for evaluating hazardous conditions;

(4) Procedures for eliminating hazardous conditions;

(5) Procedures for notifying the District Manager;

(6) Procedures for evacuating coal miners from coal mine property which may be affected by the hazardous condition.

(f) Before making any changes or modifications in the program approved in accordance with paragraph (e) of this section, the person owning, operating, or controlling the impoundment shall obtain approval of such changes or modifications from the District Manager.

(g) The qualified person or persons referred to in paragraphs (a), (b)(4), (c), (e)(1), and (e)(2) of this section shall be trained to recognize specific signs of structural instability and other hazardous conditions by visual observation and, if applicable, to monitor instrumentation.

(Secs. 101, 508, Pub. L. 91-173, 83 Stat. 745, 803 (30 U.S.C. 811, 957))

[40 FR 41777, Sept. 9, 1975, as amended at 57 FR 7471, Mar. 2, 1992]

### **30 CFR § 77.216-4**

#### **Water, sediment or slurry impoundments and impounding structures; reporting requirements; certification.**

(a) Except as provided in paragraph (b) of this section, every twelfth month following the date of the initial plan approval, the person owning, operating, or controlling a water, sediment, or slurry impoundment and impounding structure that has not been abandoned in accordance with an approved plan shall submit to the District Manager a report containing the following information:

(1) Changes in the geometry of the impounding structure for the reporting period.

(2) Location and type of installed instruments and the maximum and minimum recorded readings of each instrument for the reporting period.

(3) The minimum, maximum, and present depth and elevation of the impounded water, sediment, or slurry for the reporting period.

(4) Storage capacity of the impounding structure.

(5) The volume of the impounded water, sediment, or slurry at the end of the reporting period.

(6) Any other change which may have affected the stability or operation of the impounding structure that has occurred during the reporting period.

October 13, 2004

(7) A certification by a registered professional engineer that all construction, operation, and maintenance was in accordance with the approved plan.

(b) A report is not required under this section when the operator provides the District Manager with a certification by a registered professional engineer that there have been no changes under paragraphs (1) through (6) of this section to the impoundment or impounding structure. However, a report containing the information set out in paragraph of this section shall be submitted to the District Manager at least every 5 years.

[57 FR 7471, Mar. 2, 1992]

### **30 CFR § 77.216-5**

#### **Water, sediment or slurry impoundments and impounding structures; abandonment.**

(a) Prior to abandonment of any water, sediment, or slurry impoundment and impounding structure which meets the requirements of 30 CFR [77.216\(a\)](#), the person owning, operating, or controlling such an impoundment and impounding structure shall submit to and obtain approval from the District Manager, a plan for abandonment based on current, prudent engineering practices. This plan shall provide for major slope stability, include a schedule for the plan's implementation and, except as provided in paragraph (b) of this section, contain provisions to preclude the probability of future impoundment of water, sediment, or slurry.

(b) An abandonment plan does not have to contain a provision to preclude the future impoundment of water if the plan is approved by the District Manager and documentation is included in the abandonment plan to ensure that the following requirements are met:

(1) A registered professional engineer, knowledgeable in the principles of dam design and in the design and construction of the structure, shall certify that it substantially conforms to the approved design plan and specifications and that there are no apparent defects.

(2) The current owner or prospective owner shall certify a willingness and ability to assume responsibility for operation and maintenance of the structure.

(3) A permit or approval for the continued existence of the impoundment or impounding structure shall be obtained from the Federal or State agency responsible for dam safety.

[57 FR 7472, Mar. 2, 1992]

October 13, 2004