

Office of Surface Mining
Reclamation and Enforcement
Western Region



**Guidance for
Initial Program
Termination of SMCRA Jurisdiction**

Prepared by

Western Regional Coordinating Center
Termination of Jurisdiction Team

July 1997

Office of Surface Mining
Reclamation and Enforcement
Western Region

**Guidance for Initial Program
Termination of SMCRA Jurisdiction**

July 1997

The following information is necessary for the Office of Surface Mining Reclamation and Enforcement (OSM) to terminate jurisdiction on Indian Lands or Federal Program States for areas subject to the Initial Program Regulations under 30 CFR 715, Subchapter B. This guidance document is not intended to replace the regulations, nor should it be considered all inclusive. The permittee is encouraged to meet with OSM prior to requesting termination of jurisdiction.

Termination of jurisdiction will occur at the completion of all reclamation activities required in Subchapter B. However, OSM recommends that the permittee request OSM's written determination that the permittee has satisfied the applicable performance standard(s) for milestone reclamation activities, such as backfilling and grading, topsoil replacement, and permanent facilities and structures, prior to proceeding with subsequent reclamation activities. The purpose of such a determination would be that at termination of jurisdiction OSM would not have to revisit compliance with performance standards already evaluated and considered satisfied. This does not preclude OSM from continuing to inspect these areas to assure continued compliance with the all interim program regulations prior to termination of jurisdiction.

If an operator elects to satisfy permanent program performance standard(s) in lieu of initial program performance standard(s) (per 30 CFR 710.11(e)) the permittee should contact OSM for additional guidance.

OSM strongly recommends electronic submission of data and maps. Contact OSM for information on acceptable file types and appropriate formats.

To facilitate termination of jurisdiction OSM requests that the permittee submit the following information or provide references to earlier submittals that included this information:

1. Maps, 30 CFR 715.11(c)(1) and (d)(1).

Provide map(s) (1" = 500') showing:

- A) Parcels requested for release¹
 - B) Vegetation reference areas
 - C) Water quality sampling points¹
 - D) Slope measurement points (if used)¹
 - E) Location of permanent impoundments, small depressions, diversions and discharge structures¹
 - F) Permanent roads/transportation facilities¹
 - G) Regraded spoil and soil sampling points (if available or taken)
 - H) Areas seeded and the date of seeding or reseeded
2. Comparison of premine slopes with postmine slopes, 30 CFR 715.14(b)(1).
 - A) Slopes must be measured in accordance with 30 CFR 715.14(a) & (b). The basis of these measurements can be:
 - 1) Measured premining slopes compared to measured postmining slopes with the location of each slope measurement line and its length depicted on a map,
 - 2) Use of topographic maps with contour lines of sufficient detail and accuracy, consistent with the submitted mining and reclamation plan, or
 - 3) Other methods approved by OSM.
 - B) If a variance from approximate original contour (AOC) has been approved by OSM, the permittee must demonstrate compliance with the approved backfilling and grading plan. If no variance has been approved then comparisons must be made to the original topography.

¹The map(s) must be certified as accurate (30 CFR 715.11(c) and (d)).

3. Acid/toxic forming materials, 30 CFR 715.14(j) and 715.17(g).

Provide available data (e.g. EC, SAR, Acid-Base Account, pH, trace elements) for all regraded spoil analyses. If the permittee has concerns with the quality of the data, these quality concerns should be identified when the data is submitted.

If acid or toxic materials are identified in the regraded overburden by OSM during its inspections (see attached OSM Interim Lands Checklist, Section 2. C), the permittee will be responsible for:

- A) Delineating the areal extent of the acid and/or toxic forming materials, and
- B) Submitting a plan to OSM for review and approval to cover, remove, or treat the materials before liability is released, if one has not already been approved.

4. Small depressions, 30 CFR 715.14(d).

If small depressions are being left in the reclaimed landscape:

- A) Provide documentation or reference prior approvals for retention of small depressions. This approval may have been generic in nature (i.e., identify design characteristics, compatibility with and utility for the postmining land use).
- B) Provide a demonstration that all retained small depressions comply with approved plans and applicable performance standards.

5. Permanent impoundments, 30 CFR 715.14(e) & 715.17(k).

- A) For permanent impoundments that are approved:
 - 1) Provide a report documenting as-built configuration, or
 - 2) If as-built documentation has already been submitted to OSM, provide reference.
- B) If permanent impoundment(s) have not been approved, submit the information required under 30 CFR 715.17(k) for OSM action.

6. Topsoil handling, 30 CFR 715.16(b) and (d).
- A) Identify premine topsoil volumes used in establishing topsoil replacement depths.
 - B) Using maps and/or tables, provide average and range of thicknesses of topsoil replaced, as well as any approved substitute/supplement material used.
 - C) If applied, using maps and/or tables provide the location and quantity of nutrients and soil amendments applied to requested release parcel(s). If applied and available, submit soil/spoil tests on which the amendment or nutrient application(s) were based.

7. Surface water, 30 CFR 715.17(b)(2).

- A) Demonstrate that the quality and quantity of untreated surface runoff from the requested release parcel(s) minimizes the disturbance to the hydrologic balance and is consistent with the approved postmining land use. Demonstrations made under this requirement must use one of the following:
 - 1) The data collected from the surface water flow and quality monitoring program implemented on regraded and stabilized land within each release parcel,
 - 2) Application data collected on a similar area, or
 - 3) Information obtained using an applicable and verified computer model. If computer models are used (such as SEDCAD+, EASI, or STORM) the models must be calibrated and verified using flow and suspended sediment data collected from small watersheds, plots, and/or large watersheds (stream sites) as appropriate.

When using computer model to make the required comparisons of release parcel watersheds versus premine or representative unmined watersheds, provide computed data for variables such as peak discharge, flow volumes, peak suspended sediment concentrations, and sediment yields.

- B) Compare the chemical quality of water from release parcels to premine or representative unmined areas using pH, TDS, major dissolved cations and anions, total iron, and total manganese. In addition, OSM may require total recoverable selenium and/or other trace elements that may limit the planned postmining land use.

OSM will determine the impact of chemical water quality on the postmining land use utilizing baseline information or other standards for the postmining land use as guidance.

- C) When comparing release parcels to representative unmined areas, submit information concerning slope gradient and length, soil texture, and vegetative ground cover and rock cover for each area.

- 8. Diversion of overland flow, 30 CFR 715.17(c)(2) and (3).

If permanent diversion structures are being left as part of the postmining landscape, provide documentation or refer to prior approvals for retention of the permanent diversion structures.

- 9. Stream channel diversions, 30 CFR 715.17(d).

If stream channel diversions are being left as part of the postmining landscape, provide documentation or refer to prior approvals for retention of the stream channel diversions.

- 10. Sedimentation pond removal, 30 CFR 715.17(e)(21).

Sedimentation ponds must not be removed until the disturbed area has been restored, and the vegetation requirements of 30 CFR 715.20 are met and the drainage entering the pond has met the applicable State and Federal water quality requirements for the receiving stream. When the sedimentation pond is removed, the affected land must be regraded in accordance with 30 CFR 715.14, 715.16, and 715.20, unless the pond has been approved by OSM for retention as being compatible with the approved postmining land use.

Ponds must remain until erosion is controlled from the disturbed area and water quality requirements are met. The permittee then has two options on removing the pond: 1) demonstrate one year compliance of the reclaimed area adjacent to the pond with the requirements of 30 CFR 715.20, remove the pond and revegetate the pond area, and then sample the entire revegetated area (including the reclaimed pond area) for two years to demonstrate compliance with the requirements of 30 CFR 715.20; or 2) separate the pond area from the adjacent area proposed for termination of jurisdiction and seek a separate termination of jurisdiction once the pond area is reclaimed.

- 11. Groundwater, 30 CFR 715.17(h)(1), (2), and (3).

Provide a demonstration that shows that impacts to the recharge capacity, ground-water flow, and ground-water quality have been minimized within the mined area and off-site areas. The demonstration must be based on one of the following:

- A) Monitoring information provided from the OSM-approved ground-water monitoring plan required at 30 CFR 715.17(h)(3),
- B) Information developed with applicable and verified computer models using monitoring data or results of hydrologic tests (e.g., infiltration tests, aquifer tests, or plot or small watershed studies) to demonstrate compliance with 30 CFR 715.17(h)(1) and (2), or
- C) Monitoring data from the permit area, if representative of the release parcel.

The ground-water monitoring information must demonstrate that the requirements of 30 CFR 715.17(h)(1) and (2) are met (i.e., the recharge capacity is sufficient to support the approved postmining land use and minimize disturbance to the hydrologic balance, and backfilled materials are placed to minimize adverse effects on ground water flow and quality, minimize offsite effects, and support the approved postmining land use).

12. Roads, 30 CFR 715.17(l).

Roads can be left as permanent features, if necessary to support the postmining land use or necessary to adequately control erosion and the necessary maintenance is assured. If retained per 30 CFR 715.13 and 715.17(1), submit:

- A) Documentation that the land owner and appropriate land management agencies have been consulted.
- B) Provide written approval from and views of local, Tribal, State or Federal land use management agencies and zoning approvals, if necessary.
- C) A letter(s) from appropriate parties, other than the permittee, stating that the road supports the postmining land use and necessary maintenance is assured.
- D) Road plans and revisions must be designed to ensure adequate: (a) land stability; (b) drainage; (c) vegetative cover and (d) aesthetic design. (If necessary, the road surface width may need to be changed to be appropriate for the postmining land use.)

13. Revegetation: general, 30 CFR 715.20(a).

Provide the approved postmining land use (grazingland, wildlife habitat, etc.)

14. Methods of revegetation, 30 CFR 715.20(e).

Include a description of the species mixture used and the seeding/reseeding rates used on each release parcel(s).

15. Measuring revegetation success, 30 CFR 715.20(f).

A) Describe historical management of the reference area(s) in terms of:

- 1) grazing,
- 2) fertilization,
- 3) spraying,
- 4) burning, and
- 5) chaining.

B) Provide cover, diversity, and seasonality data from reference area(s) and requested release parcel(s) as necessitated by the designated postmining land use. Production data is only required for a cropland postmining land use. However, the permittee must demonstrate compliance with 30 CFR 715.20(a) in that the permittee must establish on all land an "effective" vegetative cover for the postmining land use (e.g., productivity, grazing capacity, or wildlife utilization).

C) Provide field data sheets or plot tabular data for cover and/or production data collected on reference areas and release parcel(s).

D) Describe sampling methodology used on the reference areas and release parcel(s).

E) Provide the appropriate mean or median comparison test with a 90% confidence interval (one-sided t-test) for cover data or, if applicable, production data collected on reference area(s) and release parcel(s).

F) Provide sample adequacy calculations for release parcels and reference areas based on cover for 90% confidence level at 10% of the mean.

16. Special requirements or conditions required by interim permits and/or mining plans.

Review and analyze interim permit and/or mining plan for compliance with special requirement/conditions. Submit appropriate documentation to OSM.

OSM INTERIM LANDS CHECKLIST

The following are items that OSM will complete once a request for termination of jurisdiction is received:

1. Determine if the request for termination of jurisdiction is in compliance with the initial program regulations and the Interim Lands Termination of Jurisdiction Guidance document.
2. Ensure the permittee has complied with:
 - A) 30 CFR 715.17(h)(3) Ground water--Determine if operation has affected quality and quantity of ground water.
 - B) 30 CFR 715.14(e) & 715.17(k) Permanent impoundments--Determine if permanent impoundments comply with the cited regulations.
 - C) 30 CFR 715.14(j)(1) Cover--Inspect the release area for bare areas. The soil in the bare areas may be sampled by OSM up to depths of four feet and analyzed to determine if acid or toxic-forming materials are present and have caused the lack of vegetation.
 - D) Any interim reclamation plan and special conditions.
3. The procedures (including newspaper notice, letters and inspection checklist) in Directive REG-26 (attached) for termination of jurisdiction on interim lands should be used to the degree possible. Note, REG-26 has been rescinded. The Western Region is in the process of developing a new procedures guidance document that will replace REG-26 when completed.
4. Determine if: 1) disturbances to the hydrologic balance and water pollution have been minimized; 2) the data indicates that long-term changes have been prevented both on and off site (30 CFR 715.17); and 3) additional contributions of suspended sediment to streamflow or runoff outside the permit area has been prevented as required in 30 CFR 715.17(c)(3), (d), and (e) (which also require that in no case shall contributions be in excess of requirements set by applicable Tribal or Federal Law).

The following items should be checked if applicable:

- A) Reclamation areas for active pedestals, rills, or gullies (see Directive REG-14, attached),
- B) Embankments and reclamation drainageways, including terraces and downdrains, for active gullying, headcutting, and extensive sediment deposition,

- C) Diversions for sloughing or spalling of banks, bed degradation, headcuts, condition of any channel lining, and/or extensive sediment deposition,
- D) Undercutting at downstream end of culverts, seepage or flows outside of culverts, structural integrity of bridges and culverts, and
- E) Any other water control structures must be inspected to be sure the structure is sound and stable.