

5. Rule 4.10.4(5) allows for a variance in the requirement of four feet of total cover/topsoil on refuse disposal areas as long as that variance ensures reclamation results that will meet all required standards for revegetation in accordance with Rule 4.15. A lesser amount of cover material is justified for the early plan to reclaim the RDA based on the following rationale.

- The variance in the cover/topsoil requirement is only approved for the early plan to reclaim the RDA. The final plan to construct the RDA to its final design height and volume as currently approved does not include any variance of the refuse cover/topsoil requirement of four feet.
- The cover variance only applies to the early plan and within that early plan, the cover variance is approved only on those areas of gentle or flat slopes. Bench outcrops, where there is a greater potential for erosion, will require four feet of cover/topsoil, 3.25 feet and .75 feet respectively.
- The cover variance approval minimizes the disturbance in the adjacent borrow area. Minimization of the mining disturbance is required and encouraged by the Rules governing coal mining.
- The cover variance approval is justified in part based on reclamation success at the New Elk Mine on the Development Waste Pile (DWP), where less than four feet of cover and topsoil was approved. The DWP at the New Elk Mine was reclaimed as approved using a total of two feet of cover, 1.25 feet of cover and .75 feet of topsoil respectively. This approval was based on site-specific information from a study of reclamation completed at the New Elk mine under an abandoned mine lands (AML) project. Furthermore, since the DWP was completely covered, topsoiled and reseeded, anecdotal information from the permittee and DRMS inspection observations indicate that revegetation efforts do not appear to be impeded by using two feet of cover/topsoil.
- The cover variance approved at the RDA uses, at a minimum 2.75 feet of total cover/topsoil and uses the maximum requirement of four feet of cover/topsoil on steep outcrops. This exceeds the approved requirement at the DWP by 37.5% at a minimum for flat and gentle slopes of the RDA and by 100% for the steep slopes of the DWP.
- The variance will be performance based. Vegetation analysis will be completed by the end of 2021 at the DWP identify any significant concerns with regard to overall revegetation success, the permittee commits to re-evaluate and modified the “early plan” specific to the variance for reduced cover on the RDA flat and gentle slopes.

Based on the information as presented above, the variance of cover allowed under Rule 4.10.4(5) is approved only for the “early plan” of reclamation of the RDA. The cover/topsoil requirement for the early plan requires 2 feet of cover followed by .75 feet of topsoil on flat and gentle slope areas (approximately 14 acres maximum exposure) and 3.25 feet of cover and .75 feet of topsoil on fully or partially constructed bench outcrops (approximately 5 acres maximum exposure). No variance in the cover requirement is approved for construction of the RDA under the “final plan” as previously approved and as shown on Figure 6, Map 24, and other approved permit materials.