

Technical Reclamation Memorandum #21 and stocking densities set in section 6(2)(b)1, or optionally to use species and stocking densities recommended specifically for the permit area by the Kentucky Department of Fish and Wildlife Resources. Sections 9(3)(c) and 9(6), regarding use of productivity test areas rather than statistical evaluation of productivity, are being deleted.

### III. Public Comment Procedures

#### *Written Comments*

OSM is reopening the comment period on the proposed Kentucky program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kentucky program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Lexington Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

### IV. Procedural Determinations

#### *Executive Order 12866*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

#### *Executive Order 12778*

The Department of the Interior has conducted the reviews required by Section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under Sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and

its implementing Federal regulations and whether the other requirements of 30 CRR parts 730, 731, and 732 have been met.

#### *National Environmental Policy Act*

No environmental impact statement is required for this rule since Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of Section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

#### *Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

#### *Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

#### **List of Subjects in 30 CFR Part 917**

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 10, 1995.

**Richard J. Seibel,**

*Acting Assistant Director, Eastern Support Center.*

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#### **30 CFR Part 935**

#### **[OH-204; Amendment No. 54R]**

#### **Ohio Regulatory and AML Programs**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule; reopening and extension of public comment period.

**SUMMARY:** OSM is reopening the public comment period for a revised amendment to the Ohio permanent regulatory and Abandoned Mined Land (AML) programs (hereinafter referred to as the Ohio programs) under the Surface Mining Control and Reclamation Act of 1977. The revised amendment proposes additional changes to ten sections of the Ohio Revised Code (ORC) to clarify those sections of State law, to conform those sections to current State practices, and to make those sections equivalent to corresponding Federal laws. The proposed revisions concern lands eligible for remining, public roadways, average wage rates, deletion of obsolete language on interim continuance of underground coal mining operations, activities eligible for Small Operator Assistance, refund of excess permit fees to operators, use of the Reclamation Supplemental Forfeiture Fund for non-coal reclamation, interfund transfers, and required staff training.

This document sets forth the times and locations that the Ohio programs and the proposed amendments to those programs will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

**DATES:** Written comments must be received on or before 4:00 p.m., e.d.t. on May 17, 1995. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m., e.d.t. on May 12, 1995. Requests to speak at the hearing must be received on or before 4:00 p.m., e.d.t. on May 2, 1995.

**ADDRESSES:** Written comments and requests to speak at the hearing should be mailed or hand-delivered to Mr. Robert H. Mooney, Acting Director, Columbus Field Office, at the address listed below.

Copies of the Ohio programs, the proposed amendments, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 4480 Refugee Road, Suite 201, Columbus, Ohio 43232, Telephone: (614) 866-0578.

Ohio Department of Natural Resources,  
Division of Reclamation, 1855  
Fountain Square Court, Building H-3,  
Columbus, Ohio 43224, Telephone:  
(614) 265-6675.

**FOR FURTHER INFORMATION CONTACT:**  
Mr. Robert H. Mooney, Acting Director,  
Columbus Field Office, (614) 866-0578.

**SUPPLEMENTARY INFORMATION:**

**I. Background on the Ohio Program**

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio programs. Information on the general background of the Ohio program submissions, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio programs, can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

**II. Description of the Proposed Amendments**

By letter dated February 7, 1992 (Administrative Record No. OH-1645), the Ohio Department of Natural Resources, Division of Reclamation (Ohio) submitted proposed Program Amendment Number 54 (PA 54). In PA 54, Ohio proposed to revise 13 sections of the ORC concerning a number of regulatory and AML issues. OSM announced receipt of PA 54 in the April 13, 1992, **Federal Register** (57 FR 12779), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on May 13, 1992.

By letter dated June 15, 1992 (Administrative Record No. OH-1714), OSM provided Ohio with its questions and comments about the February 7, 1992, submission of PA 54. On July 20, 1992, OSM and Ohio staff met to discuss and resolve OSM's questions and comments (Administrative Record No. OH-1746). On July 28, 1992, OSM and Ohio staff further resolved some of those issues in a telephone conversation (Administrative Record No. OH-1754).

In response to OSM's June 15, 1992, letter, Ohio submitted Revised Program Amendment Number 54 (PA 54R) by letter dated September 2, 1992 (Administrative Record No. OH-1769). PA 54R contained further revisions to seven sections of the ORC. OSM announced receipt of PA 54R in the October 28, 1992, **Federal Register** (57 FR 48765), and in the same notice, opened the public comment period and

provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on November 27, 1992.

On December 16, 1992 (Administrative Record No. OH-1800), OSM and Ohio staff conducted a telephone discussion of the September 2, 1992, resubmission of PA 54R. On April 30, 1993, OSM and Ohio staff met informally to discuss the status of the amendment with respect to the State's legislative process.

In the June 11, 1993, **Federal Register** (58 FR 32611), the Director of OSM announced his decision to defer Ohio PA 54R with the exception of the Director's approval of one proposed change at ORC section 1513.02(F)(3) which the Ohio General Assembly was likely to pass in its current form. The Director made this decision because the Ohio Legislative Service Commission had not yet drafted the final statutory language on which PA 54R would ultimately be based and because that language would not be available for review by OSM within the foreseeable future.

By letter dated March 31, 1995 (Administrative Record No. OH-2107), Ohio submitted the final version of PA 54R. This final version contains the statutory changes approved by the Ohio General Assembly in Senate Bill 180 and in House Bill 414. The two bills were signed by the Ohio Governor on December 23, 1992, and December 27, 1994, respectively. The revised statutes went into effect on March 24, 1993, and March 27, 1995, respectively.

Ohio's March 31, 1995, final submission of PA 54R reiterates many of the statute changes previously proposed in PA 54 and PA 54R. The new submission also proposes new changes to ten sections of the ORC. OSM discussed the previously proposed changes in the April 13 and October 28, 1992, **Federal Register** documents concerning the previous submissions of PA 54 and PA 54R. Therefore, only newly proposed substantive changes to Ohio's coal regulatory and AML program statutes are discussed below. Statute changes which solely concern Ohio's non-coal regulatory program are outside the jurisdiction of OSM and are not discussed below. Newly proposed changes to paragraph notations and other nonsubstantive wording changes which are intended solely to clarify the statutes are also not discussed below.

**(1) Lands Eligible for Remining**

ORC section 1513.01 paragraph (F): Ohio is adding this paragraph to define the term "lands eligible for remining" to mean those lands that otherwise would

be eligible for expenditure of AML reclamation funds under paragraph (C)(1) of ORC section 1513.37.

ORC section 1513.07 paragraph (E)(3)(b): Ohio is adding this new paragraph to provide that, until October 1, 2004, any violation resulting from an unanticipated event or condition at a surface coal mining operation on lands eligible for remining shall not prevent issuance of a coal mining permit to the person holding the remining permit. An unanticipated event or condition is one that was not contemplated by the applicable permit.

ORC section 1513.16 paragraph (A)(19)(b): Ohio is adding this new paragraph to provide that coal mining permits on lands eligible for remining shall require the operator to assume the responsibility for successful revegetation of the remined area for two full years after the last augmented seeding, fertilizing, or irrigation.

ORC section 1513.37 paragraph (C)(3): Ohio is adding this new paragraph to provide that surface coal mining operations on lands eligible for remining shall not affect the eligibility of those lands for AML reclamation funding under this section of the ORC after the release of the mining operation's performance bond. If the performance bond for the remining operation is forfeited and is not sufficient for adequate reclamation of the site, Ohio may use AML reclamation funding under this section to augment the bond.

**(2) Public Roadways**

ORC section 1513.01 paragraph (H)(2): Ohio is revising this paragraph to delete the existing exclusion of public roadways from the areas covered by the definitions of "operation" or "coal mining operation."

**(3) Average Wage Rates**

ORC section 1513.02 paragraph (I): Ohio is revising this paragraph to provide that the State will use information from non-coal as well as coal mining and reclamation operations in calculating average wage rates. The newly calculated average wage rates shall apply to reclamation performed for Ohio on both coal and non-coal mining sites.

**(4) Deletion of Obsolete Language**

ORC section 1513.07 paragraph (A)(1): Ohio is deleting additional obsolete language from this paragraph concerning interim continuance of underground coal mine operations which were in effect prior to September 1, 1981.

*(5) Activities Eligible for the Small Operator's Assistance Program (SOAP)*

ORC section 1513.07 paragraph (B)(4) (a) and (b): Ohio is revising these paragraphs to expand the types of activities related to permit applications which qualified laboratories can perform for permit applicants under contracts funded by Ohio's SOAP. Qualifying activities include determination of probable hydrologic consequences, development of cross-section maps and plans, geologic drilling and reporting, collection and reporting of archaeological information, performing pre-blast surveys, and collection of information on protection of fish and wildlife habitats. The coal mine operator shall reimburse the State for the costs of SOAP-assisted services if the operator's actual and attributed coal production for all locations exceeds 300,000 tons during the 12 months immediately following the date of issuance of the mining permit.

*(6) Refund of Excess Permit Fees to Operators*

ORC 1513.10: In February 7, 1992, submission of PA 54, Ohio proposed to repeal this existing section which currently authorizes Ohio to refund excess permit fees to the operator for acreage permitted but not subsequently affected. In its March 31, 1995, cover letter of the final version of PA 54R, Ohio noted that it is withdrawing its proposal to repeal this section.

ORC 1513.07 paragraph (B)(1): Ohio is deleting previously proposed language in this paragraph which would have provided that all excess permit fees collected by the State shall be deposited in the State Treasury to the credit of the Coal Mining Administration and Reclamation Reserve Fund created in ORC section 1513.181.

*(7) Use of Reclamation Supplemental Forfeiture Fund for Non-Coal Reclamation*

ORC section 1513.18 paragraph (D): In the February 7, 1992, submission of PA 54, Ohio proposed to add this new paragraph (D) which, in part, would have allowed the Division to use funds from the Reclamation Supplemental Forfeiture Fund to reclaim areas which were affected by mining under non-coal surface mining permits issued under ORC Chapter 1514 but which the operator did not adequately reclaim. In its March 31, 1995, final version of PA 54R, Ohio is withdrawing this proposed language concerning non-coal reclamation from new paragraph (D).

ORC 1514.06 paragraph (G): Ohio is proposing to revise this paragraph in

lieu of the previously proposed revision discussed above which Ohio is withdrawing from ORC section 1513.18 paragraph (D). The revision to ORC section 1514.06 paragraph (G) would provide that Ohio may expend money from the Reclamation Supplemental Forfeiture Fund or from the Surface Mining Administration Fund to complete reclamation on land affected by non-coal surface mining operations on which an operator has defaulted.

ORC section 1513.18 paragraph (D): Ohio is adding a statement in this paragraph concerning the State's priority for management of the Reclamation Supplemental Forfeiture Fund, including the selection of projects and the transfer of moneys. That priority shall be to ensure that sufficient moneys are available for reclamation of areas that an operator has affected under a coal mining and reclamation permit issued after September 1, 1981, and which the operator has failed to reclaim.

*(8) Interfund Transfers*

ORC 1513.181 paragraph (B): In its September 2, 1992, submission of PA 54R, Ohio proposed to add this new paragraph to provide the State with additional flexibility to manage the funding of the Coal Mining Administration and Reclamation Reserve Fund and the Reclamation Supplemental Forfeiture Fund. If, at the close of the fiscal year, the former fund's balance is below one million dollars, the State could have transferred funds of up to \$500,000 per fiscal year from the Coal Mining Administration and Reclamation Reserve Fund to the Reclamation Supplemental Forfeiture Fund. In its March 31, 1995, final version of PA 54R, Ohio is withdrawing this proposal language.

*(9) Required Staff Training*

ORC section 1513.34: Ohio is revising this section to delete the requirements for minimum hourly amounts of initial and annual follow-up training for certain staff positions. In lieu of a minimum of 80 hours of training, Ohio shall provide adequate training and education, during their probationary periods, for all persons appointed as inspection officers. In lieu of a minimum of 40 hours of annual training, Ohio shall provide, on a regular basis as funding allows, continuing education and training as necessary for all inspection officers, district supervisors, and enforcement personnel.

**III. Public Comment Procedures**

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking

comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio programs.

*Written Comments*

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

*Public Hearing*

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.d.t. on May 2, 1995. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions. The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

*Public Meeting*

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each public meeting will be made a part of the Administrative Record.

**List of Subjects in 30 CFR Part 935**

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 10, 1995.

**Richard J. Seibel,**

*Acting Assistant Director, Eastern Support Center.*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 81**

[NC-061-1-6815; FRL-5191-3]

**Proposed Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of North Carolina**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** On November 12, 1993, the State of North Carolina through the North Carolina Department of Environment, Health, and Natural Resources submitted a maintenance plan and a request to redesignate the Charlotte-Gastonia area from nonattainment to attainment for ozone ( $O_3$ ). Subsequently on December 16, 1994, and January 6, 1995, the State submitted supplementary information which included refined modeling and identification of the future reductions needed to maintain the national ambient air quality standard (NAAQS) for  $O_3$ . The Charlotte-Gastonia  $O_3$  nonattainment area includes Mecklenburg and Gaston Counties. Under the Clean Air Act, designations can be changed if sufficient data are available to warrant such changes. In this action, EPA is proposing to approve the State of North Carolina's submittal because it will meet the maintenance plan and redesignation requirements. The approved maintenance plan will become a federally enforceable part of North Carolina's State Implementation Plan (SIP) for the moderate nonattainment area. In this action, EPA is also proposing to approve the State of North Carolina's 1990 baseline emissions inventory because it meets EPA's requirements regarding the approval on baseline emission inventories.

**DATES:** To be considered, comments must be received by May 17, 1995.

**ADDRESSES:** Written comments on this action should be addressed to Kay

Prince, at the EPA Regional Office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

State of North Carolina, Air Quality Section, Division of Environmental Management, North Carolina Department of Environment, Health, and Natural Resources, Raleigh, North Carolina 27626.

Environmental Management Division, Mecklenburg County Department of Environmental Protection, 700 N. Tryon Street, Charlotte, North Carolina 28202-2236.

**FOR FURTHER INFORMATION CONTACT:** Kay Prince, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347-3555 extension 4221. Reference file NC-061-1-6815.

**SUPPLEMENTARY INFORMATION:** On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. (Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q). Under section 107(d)(1)(C), EPA designated Mecklenburg County of the Charlotte-Gastonia area as nonattainment by operation of law with respect to  $O_3$  because the area was designated nonattainment immediately before November 15, 1990. The nonattainment area was expanded to include Gaston County per section 107(d)(1)(A)(i) (See 56 FR 56694 (Nov. 6, 1991) and 57 FR 56762 (Nov. 30, 1992), codified at 40 CFR 81.318.) The area was classified as moderate.

The moderate nonattainment area more recently has ambient monitoring data that show no violations of the  $O_3$  NAAQS, during the period from 1990 through 1993. Therefore, in an effort to comply with the Clean Air Act as amended in 1990 (CAA) and to ensure continued attainment of the NAAQS, on November 12, 1993, the State of North Carolina submitted an  $O_3$  maintenance plan and requested redesignation of the area to attainment with respect to the  $O_3$  NAAQS. On January 24, 1994, Region 4 determined that the information received from the State constituted a

complete redesignation request under the general completeness criteria of 40 CFR 51, appendix V, sections 2.1 and 2.2. Subsequently, on December 16, 1994, and January 6, 1995, the State submitted additional information that refined the modeling and clarified the future measures needed to ensure maintenance of the  $O_3$  NAAQS.

The North Carolina redesignation request for the Charlotte-Gastonia moderate  $O_3$  nonattainment area meets the five requirements of section 107(d)(3)(E) for redesignation to attainment. The following is a brief description of how the State of North Carolina has fulfilled each of these requirements. Because the maintenance plan is a critical element of the redesignation request, EPA will discuss its evaluation of the maintenance plan under its analysis of the redesignation request.

**1. The Area Must Have Attained the  $O_3$  NAAQS**

The State of North Carolina's request is based on an analysis of quality assured ambient air quality monitoring data, which is relevant to the maintenance plan and to the redesignation request. Most recent ambient air quality monitoring data for calendar year 1990 through calendar year 1993 show an expected exceedance rate of less than 1.0 per year of the  $O_3$  NAAQS in the nonattainment area (See 40 CFR 50.9 and appendix H). The area has continued to demonstrate attainment to date. Because the nonattainment area has complete quality-assured data showing no violations of the  $O_3$  NAAQS over the most recent consecutive three calendar year period, the area has met the first component of attainment of the  $O_3$  NAAQS. The State of North Carolina has also met the second component of attainment of the  $O_3$  NAAQS by committing to continue monitoring the moderate nonattainment area in accordance with 40 CFR part 58.

**2. The Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA**

On April 17, 1980, August 27, 1981, October 11, 1985, November 19, 1986, and December 19, 1986, EPA fully approved North Carolina's SIP as meeting the requirements of section 110(a)(2) and part D of the 1977 CAA (45 FR 26038, 46 FR 43137, 50 FR 41501, 51 FR 41786, and 51 FR 45468). The approved control strategy did not result in attainment of NAAQS for  $O_3$  prior to the 1990 CAA. Additionally, the amended CAA revised section 182(a)(2)(A), 110(a)(2) and, under part