

5. 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 Tribe or State submittal which is the subject of this rule is based upon 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 established by SMCRA or previously promulgated by OSM will be implemented by the Tribe or State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 756

Abandoned mine reclamation programs, Indian lands, Surface mining, Underground mining.

Dated: November 29, 1995.

James F. Fulton,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 95-29877 Filed 12-6-95; 8:45 am]

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30 CFR Part 906

[SPATS No. CO-029-FOR]

Colorado Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Colorado regulatory program (hereinafter, the "Colorado program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to and additions of rules pertaining to Colorado's responsibility as regulatory authority for regulating surface coal mining and reclamation operations and coal exploration; definitions; commercial use or sale of coal extracted during coal exploration; public availability of information; right of entry and operation information; public notice and comment on permit applications; procedures for review of permit applications; criteria for permit

approval or denial; permit conditions; permit revisions; allowance of self-bonds; terms and conditions for self-bonds; criteria and schedule for release of performance bonds; termination of jurisdiction; performance standards for signs and markers, haul and access roads, effluent standards for discharges of water from areas disturbed by surface coal mining and reclamation operations, blasting, and coal mine waste returned to underground mine workings; inspection frequency at abandoned sites; inspections based upon citizen requests; enforcement actions at abandoned sites; show cause orders and patterns of violations involving violations of water quality effluent standards; and award of costs and expenses including attorney's fees. The amendment is intended to revise the Colorado program to be consistent with the corresponding Federal regulations, incorporate the additional flexibility afforded by the revised Federal regulations, and improve operational efficiency.

DATES: Written comments must be received by 4 p.m., m.s.t. January 8, 1996. If requested, a public hearing on the proposed amendment will be held on January 2, 1996. Requests to present oral testimony at the hearing must be received by 4 p.m., m.s.t., on December 22, 1995.

ADDRESSES: Written comments should be mailed or hand delivered to James F. Fulton at the address listed below.

Copies of the Colorado program, the proposed amendment, 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 amendment by contacting OSM's Denver Field Division.

James F. Fulton, Chief, Denver Field Division, Western Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3300, Denver, CO 80202

Colorado Division of Minerals and Geology, Department of Natural Resources, 215 Centennial Building, 1313 Sherman Street, Denver, Colorado 80203, Telephone: (303) 866-3567.

FOR FURTHER INFORMATION CONTACT:

James F. Fulton, telephone: (303) 672-5524.

SUPPLEMENTARY INFORMATION:

I. Background on the Colorado Program

On December 15, 1980, the Secretary of the Interior conditionally approved the Colorado program. General background information on the Colorado program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Colorado program can be found in the December 15, 1980, Federal Register (45 FR 82173). Subsequent actions concerning Colorado's program and program amendments can be found at 30 CFR 906.11, 906.15, 906.16, and 906.30.

II. Proposed Amendment

By letter dated November 20, 1995, Colorado submitted a proposed amendment to its program (administrative record No. CO-676) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*).

Colorado submitted the proposed amendment at its own initiative; in partial response to May 7, 1986, and March 22, 1990, letters (administrative record No. CO-282 and CO-496) that OSM sent to Colorado in accordance with 30 CFR 732.17(c); and in response to (1) the condition of Colorado's program approval at 30 CFR 906.11(mm) and (2) the requirement that Colorado amend its program at 30 CFR 906.16(a).

Colorado proposes for the following provisions of 2 CCR 407-2, Rules and Regulations of the Colorado Mined Land Reclamation Board for Coal Mining:

Revisions at Rule 1.03.1(1)(a) to clarify that Colorado's responsibility for the regulation of surface coal mining and reclamation operations and coal exploration includes, among other things, approval or disapproval of revisions and renewals of existing permits;

Recodification of existing Rule 1.04(1) as Rule 1.04(1a), and addition at Rule 1.04(1) of a definition for "Abandoned site" to identify (1) those sites which could have a decreased frequency of inspection under proposed Rule 5.0202(8) and (2) the enforcement provisions applicable to sites which meet the conditions of the definition;

Addition at Rule 1.04(31a) of a definition for "Current assets" to mean "cash or other assets or resources which are reasonably expected to be converted to cash or sold or consumed within one year or within the normal operating cycle of the business;"

Addition at Rule 1.04(31b) of a definition for "Current liabilities" to mean "obligations which are reasonably expected to be paid or liquidated within

one year or within the normal operating cycle of the business;"

Addition at Rule 1.04(47a) of a definition for "Fixed assets" to mean "plants and equipment, but does not include land or coal in place;"

Revision at Rule 1.04(71a) of the definition for "Net worth" to mean "total assets minus total liabilities and is equivalent to owners' equity;"

Addition at Rule 1.04(83b) of a definition for "Parent corporation" to mean "a corporation which owns or controls the applicant;"

Revision at Rule 1.04(89) of the definition for "Permit area" to require that the area "be identified through a complete and detailed legal description" as required by Rule 2.03.6;

Revision at Rule 1.04(92) of the definition for "Person" to clarify that it applies to listed entities conducting "surface coal mining and reclamation operations outside Indian lands;"

Addition at Rule 1.04(116) of a definition for "Self-bond" to mean "an indemnity agreement in a sum certain executed by the applicant or by the applicant and any corporate guarantor and made payable to the regulatory authority, with or without separate surety;"

Addition at Rule 1.04(135a) of a definition for "Tangible net worth" to mean "net worth minus intangibles such as goodwill and rights to patents or royalties;"

Recodification of existing Rule 2.02.7, concerning public availability of information, as Rule 2.02.8 and (1) addition of Rule 2.02.7(1), which requires that persons who intend to commercially use or sell coal extracted during coal exploration operations to first obtain a permit to conduct a surface coal mining operation, and (2) addition of Rule 2.02.7(2) which provides that no such permit need be obtained if the applicant demonstrates as set forth in the rule that such sale or commercial use of the extracted coal would be for testing purposes only;

Revision of Rule 2.03.3(8) to require that an applicant file three, rather than five, reproducible copies of the complete permit application with original signatures;

Revision of Rule 2.03.4(10), concerning information required by Rules 2.03.4 and 2.03.5, to delete the requirement that the information be submitted "on a form approved by the Board;"

Revision of Rule 2.03.6(1) to require that each permit application contain a "complete and detailed legal description of all lands within the proposed permit boundary," and clarification that it also contain a

"statement as to" whether the right upon which the applicant bases his or her legal right to enter and begin surface coal mining operations in the permit area is the subject of pending litigation;

Revision of Rule 2.07.3(2), concerning public notice of a proposed surface coal mining operation, to clarify that the rule applies not only to applications for a new permit but also to applications for a permit revision, a technical revision, or a renewal of an existing permit;

Revision of Rules 2.07.3(2) (e) and (f), respectively, either the affected area would be within 100 feet of the outside right-of-way of a public road or the applicant seeks relocation or closure of a public road, to add the requirement that the public notice for the permit application include a "statement indicating that a public hearing in the locality of the proposed mining operation for the purpose of determining whether the interests of the public and affected landowners will be protected may be requested by contacting the Division in writing within 30 days after the last publication of the notice;"

Revision of Rules 2.07.3(3)(a) and (3)(a)(iii) to clarify that Colorado will, upon receipt of a complete application for a "technical revision," issue written notification of where a copy of the application may be "inspected" rather than "submitted;"

Revision of Rule 2.07.3(4)(a), concerning the requirement that the applicant make a copy of his or her complete application, excluding confidential information, available for the public to inspect or copy, to clarify that the rule applies to an application for a technical revision;

Revision of Rule 2.07.4(2), concerning the procedures applicable to Colorado's proposed decision, to clarify that the rule applies to decisions on applications for a permit, permit revision, or permit renewal;

Revision of Rule 2.07.4(3)(b) to state that if Colorado approves the granting of a permit, the permit will be issued "upon filing and approval of the performance bond pursuant to 2.07.4(2)(e);"

Revision of Rule 2.07.4(3)(c), concerning Colorado's issue and implementation of a proposed decision on an application package as final, to require that no permit shall be issued until the applicant has filed a performance bond that has been approved;

Addition at Rule 2.07.5(2)(c), concerning public availability of information in permit applications and information required by Rules 2.07.5(1)

(b) and (c) to be kept confidential, of the requirement that information requested to be held as confidential shall not be made publicly available until after the notice and opportunity to be heard is afforded both persons seeking disclosure and those persons opposing disclosure of information and such information is determined by Colorado not to be confidential, proprietary information;

Revision of Rule 2.07.6(2), concerning criteria for permit approval, to clarify that the rule applies to an application for a permit revision;

Revision of Rules 2.07.6(2)(d) and 2(d)(iii)(E), concerning the findings that must be made by Colorado prior to approval of an application for a permit or a permit revision, to clarify that the rules apply to the area affected by the proposed surface coal mining operations rather than to the proposed operation or proposed permit area;

Revision of Rules 2.07.6(2)(d)(iv) (A) through (C), concerning proposals to either relocate or close public roads, or to allow the affected area to be within 100 feet of a public road, to require that Colorado, or the appropriate public road authority designated as the responsible agency by Colorado, (1) provide opportunity for a public hearing and public notice if a hearing is requested and (2) if a hearing is held, make a written finding within 30 days of the close of the hearing as to whether the interests of the public and the affected landowners will be protected;

Revision of Rule 2.07.6(2)(d)(iv)(D), to require, whether a public hearing is held or not, that no affected area shall be allowed within 100 feet of the outside right-of-way line of a public road, nor may a public road be relocated or closed, unless the applicant has obtained all necessary approval of the authority with jurisdiction over the public road, and that Colorado or the public road authority has made a written finding that the interests of the public and the affected landowners will be protected;

Revision of Rule 2.07.7, concerning conditions of each permit issued by Colorado, to add at Rules 2.07.7 (6), (7), (8), and (9), conditions requiring that a permittee shall, respectively, (1) conduct operations only on lands specifically designated as the permit area and contain areas disturbed and affected within the boundaries authorized on permit application maps for the term of the permit and on areas subject to a performance bond; (2) conduct all operations only as described in the approved application, except as otherwise directed by Colorado in the permit; (3) comply with the terms and

conditions of the permit, all applicable performance standards of the Act, and the requirements of Colorado's rules; and (4) maintain continuous, uninterrupted bond coverage in adequate amount;

Revision of Rule 2.08.4 to clarify by reorganization of Rules 2.08.4 (1) through (3) the types of permitting modifications pertinent to, respectively, permit revisions, technical revisions, and minor revisions, and to state at Rule 2.08.4(4) that the operator may not implement any permit revision, technical revision, or minor revision prior to obtaining final approval;

Deletion of Rule 2.08.4(1)(c), which provided allowance for a permit revision in order to continue operation after the cancellation or material reduction of the liability insurance policy, capability of self-insurance, or performance bond, upon which the original permit was issued;

Recodification of existing Rules 2.08.4 (4) and (5) as Rules 2.08.4 (5) and (6), and revision of Rule 2.08.4(6)(b)(i) to specify that availability of the informal conference process need not be included in the newspaper advertisement for a technical revision;

Addition to Rule 2.08.4(6)(b)(ii) to provide a 10-day public comment period on technical revision applications;

Recodification of existing Rule 2.08.4(6)(b)(ii) as Rule 2.08.4(6)(b)(iii) and revision of it to delete the statement that the "requirements of the State Administrative Procedure Act shall not apply to the conduct of the public hearing" provided for by the rule;

Revision of Rule 2.08.6(4)(a), concerning findings made upon permit transfer, sale, or assignment of rights, to correctly cite the reference to Rule 2.07.6(2)(h);

Revision of Rule 3.02.4(1)(c) to provide for a self-bond as an acceptable form of performance bond;

Revision of Rule 3.02.4(2)(e) to identify at (1) Rule 3.02.4(2)(e)(i) the conditions for a self-bond that must be met by the applicant or its corporate guarantor; (2) Rule 3.02.4(2)(e)(ii) the terms of a corporate guarantee for an applicant's self-bond based on a parent corporate guarantor; (3) Rule 3.02.4(2)(e)(iii) the terms of a nonparent corporate guarantee for an applicant's self-bond based on any corporate guarantor; (4) Rule 3.02.4(2)(e)(iv) the percent net worth of the applicant, parent corporate guarantor, or nonparent corporate guarantor necessary to support the total amount of the outstanding and proposed self-bonds; (5) Rule 3.02.4(2)(e)(v) the terms of an indemnity agreement if Colorado

accepts an applicant's self-bond; (6) Rule 3.02.4(2)(e)(vi) the right of Colorado to require updated information within 90 days after the close of each fiscal year following the issuance of a self-bond or corporate guarantee; and (7) Rule 3.02.4(2)(e)(vii) the requirement that if at any time during the period when a self-bond is posted, the certain financial conditions of the applicant, parent or nonparent corporate guarantors change, the permittee shall notify Colorado immediately and shall within 90 days post an alternate form of bond in the same amount of the self-bond and that the provisions of Rule 3.02.4(2)(b)(v) shall apply should the permittee fail to do so;

Addition of Rule 3.03.1(5) to specify terms for release of bond liability on areas associated with temporary drainage and sediment control facilities and clarify that the bond liability period does not restart when sediment control facilities are removed and reclaimed;

Addition of Rule 3.03.3 to provide for termination of jurisdiction over a reclaimed site of a completed surface coal mining and reclamation operation;

Recodification of Rules 4.02.2(2)(a) and (b) to add paragraph (c) which requires that the name, address, and telephone number of the Colorado Division of Minerals and Geology be included on mine identification signs which are posted at the entrance to mine sites;

Revision of Rules 4.03.1(d) and 4.03.2(1)(f) to require a showing that a road meets the performance standards of Rules 4.03.1 and 4.03.2, respectively, rather than an engineer's construction or reconstruction certification for haul and access roads not within the disturbed area for which the construction or reconstruction was complete prior to August 1, 1995;

Revision of Rule 4.05.2(7), concerning discharges of water from areas disturbed by surface coal mining and reclamation operations, to reference the Environmental Protection Agency effluent limitations at 40 CFR Part 434;

Revision of Rule 4.08.3(2)(b)(i) to remove the provision forbidding a blasting area in excess of 300 acres;

Revision of Rule 4.11.3, concerning coal mine waste returned to underground mine workings, to reference Rule 2.05.3(9);

Revision of Rule 5.02.2(4)(b) to clarify that an inactive site is one for which at least 85, rather than 100, percent of the performance bond has been released;

Addition of Rule 5.02.2(8) to allow for a decreased inspection frequency on abandoned sites which would be subject to public notice and opportunity for comment and based on assessment of

earthen structures, erosion and sediment control, proximity to occupied dwellings, schools and other public or commercial buildings, the degree of stability of reclaimed and/or unreclaimed areas, and the rate at which adverse environmental or public health and safety conditions have and can be expected to progressively deteriorate;

Revision of Rule 5.02.5(1) to allow any person believing that a violation of "the Act, the rules, or the permit, or if imminent danger or harm exists" to request an inspection, and revision of Rule 5.02.5(1)(a) to set forth specific time frames in which the inspection is to be conducted;

Addition of Rules 5.03.2(1)(e) and 5.03.2(2)(h), concerning cessation orders and notices of violation, to allow Colorado to refrain from issuing a cessation order or a notice of violation for a violation at an abandoned site, if abatement of the violation is required under any previously issued order or notice;

Revision of Rule 5.03.2(3) to allow Colorado to refrain from issuing a failure-to-abate cessation order for failure to abate a violation or failure to accomplish an interim step, if the operation is an abandoned site;

Revision of Rules 5.03.3.1 (1)(a), (2)(a) (i) and (ii), and (2)(b), concerning show cause orders and patterns of violations, to incorporate notices of violation issued by the Colorado Department of Health, Water Quality Control Division (which cite a one day exceedance of EPA's effluent standards referenced in Rule 4.05.2) into Colorado's pattern of violation and show cause process;

Revision of Rule 5.03.6, concerning costs, expenses, and attorney's fees, to include wording in the introductory paragraph specifying that any sum awarded for costs and expenses may include those costs and expenses incurred in seeking the award; and

Addition of Rule 5.03.6(4)(e) to provide that appropriate costs and expenses including attorney's fees may be awarded from Colorado to "any person, other than a permittee or his representative, who initiates or participates in any administrative proceeding under the Act, and who prevails in whole or in part, achieving at least some degree of success on the merits, upon a finding that such person made a substantial contribution to a full and fair determination of the issues."

Colorado also proposes minor editorial revisions at Rule 2.07.7(1), concerning permit conditions; Rule 2.08.6(2)(b)(iii), concerning transfer, assignment, or sale of permit rights; and Rule 4.08.4(10), concerning the table

showing the maximum peak particle velocity in blasting operations.

III. Public Comment Procedures

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 Colorado program.

1. 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 Denver Field Division will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.s.t., on December 22, 1995. 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**. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the 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 testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representative to discuss the proposed amendment may request a meeting by contacting the

person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. 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).

2. 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 1255) 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 CFR Parts 730, 731, and 732 have been met.

3. 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 of 1969 (42 U.S.C. 4332(2)(C)).

4. 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.*).

5. 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 906

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 30, 1995.

James F. Fulton,

Acting Regional Director, Western Regional Coordinating Center.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Region II Docket No. 146, SIPTRAX NJ23-1-7243(b); FRL-5322-3]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of New Jersey; Revised Policy Regarding Applicability of Oxygenated Fuels Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a request made by the New Jersey Department of Environmental Protection (NJDEP) to redesignate Camden County and nine not-classified areas, which includes the City of Atlantic City, the City of Burlington, the Borough of Freehold, the City of Morristown, the Borough of Penns Grove (part), the City of Perth Amboy, the Borough of Somerville, the City of Toms River, and the City of Trenton, from nonattainment to attainment for carbon monoxide (CO). EPA's determination to approve New Jersey's request is based on the fact that New Jersey demonstrates compliance with the requirements of section 107(d)(3)(E) of the Clean Air Act (CAA) for redesignation. EPA is also proposing to approve the Camden County and the nine not-classified CO maintenance plans submitted by NJDEP because EPA