

Dated: May 31, 1996.

Allen D. Klein,

*Regional Director, Appalachian Regional  
Coordinating Center.*

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BILLING CODE 4310-05-M

### 30 CFR Part 946

[VA-106-FOR]

#### Virginia Regulatory Program

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

**ACTION:** Proposed rule; public comment period and opportunity for public hearing.

**SUMMARY:** OSM is announcing receipt of a proposed amendment to the Virginia regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of regulatory changes to implement the standards of the Federal Energy Policy Act of 1992, and the Code of Virginia as amended in 1993. The amendment is intended to revise the State program to be consistent with the Federal regulations as amended on March 31, 1995 (60 FR 16772).

**DATES:** Written comments must be received by 4:00 p.m., on July 11, 1996. If requested, a public hearing on the proposed amendment will be held on July 8, 1996. Requests to speak at the hearing must be received by 4:00 p.m., on June 26, 1996.

**ADDRESSES:** Written comments and requests to speak at the hearing should be mailed or hand delivered to Mr. Robert A. Penn, Director, Big Stone Gap Field Office at the first address listed below.

Copies of the Virginia program, the proposed amendment, a listing of any scheduled public hearings, 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 requestor may receive one free copy of the proposed amendment by contacting OSM's Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219, Telephone: (703) 523-4303

Virginia Division of Mined Land Reclamation, P.O. Drawer 900, Big

Stone Gap, Virginia 24219,  
Telephone: (703) 523-8100.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Telephone: (703) 523-4303.

**SUPPLEMENTARY INFORMATION:**

**I. Background on the Virginia Program**

On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program. Background information on the Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the December 15, 1981, Federal Register (46 FR 61085-61115). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 946.12, 946.13, 946.15 and 946.16.

**II. Discussion of the Proposed Amendment**

By letter dated May 21, 1996 (Administrative Record No. VA-882), Virginia submitted amendments to the Virginia program concerning subsidence damage. The amendments are intended to make the Virginia program consistent with the Federal regulations as amended on March 31, 1995 (60 FR 16722). Virginia stated that the proposed amendments implement the standards of the Federal Energy Policy Act of 1992, and sections 45.1-243 and 45.1-258 of the Code of Virginia.

Virginia also noted that the State has adopted a revised system for numbering the Virginia regulations. For the Virginia program, the prefix "480-03-19" has been replaced with "4 VAC 25-130-." The part of the existing Virginia numbering system that corresponds to the Federal number remains the same. For example, old "480-03-19.700.5" has been "4 VAC 25-130-700.5." The Virginia Division of Mines, Minerals and Energy (DMME) will be reprinting the Virginia program regulations to incorporate the new prefix, both in the numbering of the regulations and in references contained in the regulations. However, the DMME is continuing to use the "480-03-19." prefix pending the reprint.

The proposed amendments are as follows:

**1. § 480-03-19.700.5 Definitions**

(a) "Drinking, domestic or residential water supply" has been added to mean water received from a well or spring and any appurtenant delivery system that provides water for direct human consumption or household use. Wells and springs that serve only agricultural,

commercial or industrial enterprises are not included except to the extent the water supply is for direct human consumption or human sanitation, or domestic use.

(b) "Material damage, in the context of §§ 480-03-19.784.20 and 480-03-19.817.121" of this chapter has been added to mean:

(a) Any functional impairment of surface lands, features, structures or facilities;

(b) Any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or

(c) Any significant change in the condition, appearance or utility of any structure or facility from its presubsidence condition.

(c) "Non-commercial building" has been added to mean any building, other than an occupied residential dwelling, that, at the time the subsidence occurs, is used on a regular or temporary basis as a public building or community or institutional building as those terms are defined in § 480-03-19.700.5 of this chapter. Any building used only for commercial agricultural, industrial, retail or other commercial enterprises is excluded.

(d) "Occupied residential dwelling and structures related thereto" has been added to mean, for purposes of §§ 480-03-19.784.20 and 480-03-19.817.121, any building or other structures that, at the time the subsidence occurs, is used either temporally, occasionally, seasonally, or permanently for human habitation. This term also includes any building, structure or facility installed on, above or below, or a combination thereof, the land surface if that building, structure or facility is adjunct to or used in connection with an occupied dwelling. Examples of such structures include, but are not limited to, garages; storage sheds and barns; greenhouses and related buildings, utilities and cables, fences and other enclosures; retaining walls; paved or improved patios, walks and driveways; septic treatment facilities; and lot drainage and lawn and garden irrigation systems. Any structure used only for commercial agricultural, industrial, retail or other commercial purposes is excluded.

(e) "Replacement of water supply" has been added to mean, with respect to protected water supplies contaminated, diminished, or interrupted by coal mining operations, provision of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes provision of an

equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies.

(a) Upon agreement by the permittee and the water supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one-time payment of amount which covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the permittee and the water supply owner.

(b) If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the post mining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If the latter approach is selected, written concurrence must be obtained from the water supply owner.

#### 2. § 480-03-19.784.14 Hydrologic Information

Subsection (e) has been amended by adding new subsection (e)(3)(iv) to provide that the probable hydrologic consequences (PHC) determination shall contain findings on: "Whether the underground mining activities conducted after October 24, 1992 may result in contamination, diminution or interruption of a well or spring in existence at the time the permit application is submitted and used for domestic, drinking, or residential purposes within the permit or adjacent areas."

#### 3. § 480-03-19.784.10 Subsidence Control Plan

The existing language of this provision is deleted and replaced by new language. New subsection (a) provides for a pre-subsidence survey that includes a map to identify structures, renewable resource lands and drinking, domestic and residential water supplies that subsidence may affect; an accompanying narrative; and a pre-subsidence survey of all non-commercial buildings or occupied residential dwellings and structures related thereto, that may be damaged by subsidence, and a survey of the quantity and quality of all drinking, domestic, and residential water supplies within the permit and adjacent area that could be contaminated, diminished, or interrupted by subsidence.

Subsection (b) provides for a subsidence control plan. The subsidence control plan shall contain a

description of the mining method; a map of underground workings showing areas of planned subsidence, and areas where measures to minimize subsidence and subsidence related damage; a description of the overlying rock strata that affect the likelihood or extent of subsidence and subsidence related damage; a description of monitoring if needed; a description of subsidence control measures, except for areas where planned subsidence is projected to be used; a description of the anticipated effects of planned subsidence, if any; a description of methods to be employed to minimize the effects of planned subsidence, or the written consent of the owner that such measures not be taken; a description of the measures to be taken to replace adversely affected protected water supplies or to mitigate or remedy any subsidence related material damage to the land and protected structures; and other information as specified by the Division of Mined Land Reclamation (DMLR).

#### 4. § 480-03-19.817.41 Hydrologic Balance Protection

New subsection (j) is added to provide that the permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the DMLR received the permit application for the activities causing the loss, contamination or interruption. The baseline hydrologic information required in § 480-03-19.784.14 and the geologic information concerning baseline hydrologic conditions required in § 480-03-784.22 will be used to determine the impact of mining activities upon the water supply.

#### 5. § 480-03-19.817.121 Subsidence Control

Subsection (a) concerning measures to prevent or minimize damage is amended by adding new language to provide that planned subsidence must include measures to minimize material damage to protected structures, except if the permittee has written consent of the structure owners, or unless the anticipated damage would constitute a threat to health or safety, the costs of such measures exceed the anticipated costs of repair, or the structure owners deny the permittee access to implement the measures to minimize material damage and the permittee provides written evidence of good faith efforts to obtain access.

Subsection (c) has been revised by deleting the existing language and replacing new language. The new language provides for the repair of damage to surface lands; the repair or compensation for damage to non-commercial buildings and dwellings and related structures; repair or compensation for damage to other structures; rebuttable presumption of causation by subsidence; approval of site-specific angle of draw; no presumption where access for pre-subsidence survey is denied; rebuttal of presumption; information to be considered in determination of causation.; and adjustment of bond amount for subsidence damage.

### 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 Virginia satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Virginia program.

#### 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 Big Stone Gap 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 close of business on June 26, 1996. 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 response 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.

**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 Big Stone Gap Field Office 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 in advance at the locations listed under **ADDRESSES**. A written summary of each public meeting will be made part of the Administrative Record.

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**.

**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 12988**

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, 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 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.

**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 which 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.

**Unfunded Mandates**

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

**List of Subjects in 30 CFR Part 946**

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 31, 1996.

Allan D. Klein,

*Regional Director, Appalachian Regional Coordinating Center.*

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[PA 52-2-7155; FRL-5506-9]

**Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Extension of Comment Period**

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

**ACTION:** Notice of extension of public comment period.

**SUMMARY:** EPA is reopening the comment period for a proposed rule published on April 9, 1996 (61 FR 15744). In the April 9, 1996 notice, EPA

proposed to approve a reasonably available control technology (RACT) requirements for 21 Pennsylvania sources of volatile organic compounds (VOCs) or nitrogen oxides (NO<sub>x</sub>). At the request of the New York State Department of Environmental Conservation, EPA is reopening the comment period through June 10, 1996, only as it pertains to the RACT determinations for Pennsylvania Power—New Castle plant and International Paper—Hammermill Division. All comments received on or before June 10, 1996, including those received between the close of the comment period on May 9 and the publication of this notice, will be entered into the public record and considered by EPA before taking final action on the proposed rule.

**DATES:** Comments are now due on or before June 28, 1996.

**ADDRESSES:** Comments may be mailed to Kathleen Henry, Acting Chief, Ozone and Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Cynthia H. Stahl at the U.S. EPA Region III address above, (215) 597-9337, or after May 20, 1996, (215) 566-2180, or via e-mail at stahl.cynthia@epamail.epa.gov pertaining to the reopening of the comment period for the Pennsylvania Power—New Castle and International Paper—Hammermill RACT determinations.

Dated: May 9, 1996.

Stanley Laskowski,

*Acting Regional Administrator, Region III.*

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**40 CFR Parts 52 and 81**

[W171-01-7297; FRL-5518-8]

**Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes: Wisconsin**

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