

30 CFR Part 920

[MD-041-FOR]

Maryland 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 proposed amendments to the Maryland regulatory program (hereinafter the "Maryland program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendments consist of revisions to the Maryland regulations pertaining to excess spoil disposal, conditions of surety and collateral bonds, and procedures for release of general bonds. The amendments are intended to revise the Maryland program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., E.S.T., March 3, 1997. If requested, a public hearing on the proposed amendment will be held on February 24, 1997. Requests to speak at the hearing must be received by 4:00 p.m., E.S.T., on February 14, 1997.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to George Rieger, Field Branch Chief, at the address listed below.

Copies of the Maryland 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 requester may receive one free copy of the proposed amendment by contacting OSM's Appalachian Regional Coordinating Center.

George Rieger, Field Branch Chief,
Appalachian Regional Coordinating
Center, Office of Surface Mining
Reclamation and Enforcement, 3
Parkway Center, Pittsburgh PA 15220,
Telephone: (412) 937-2153

Maryland Bureau of Mines, 160 South
Water Street, Frostburg, Maryland
21532, Telephone: (301) 689-4136

FOR FURTHER INFORMATION CONTACT:
George Rieger, Field Branch Chief,
Appalachian Regional Coordinating
Center, Telephone: (412) 937-2932.

SUPPLEMENTARY INFORMATION:**I. Background on the Maryland Program**

On February 18, 1982, the Secretary of the Interior approved the Maryland program. Background information on the Maryland program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the February 18, 1982, Federal Register (47 FR 7214). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 920.15 and 920.16.

II. Description of the Proposed Amendment

Maryland provided an informal amendment to OSM regarding excess spoils on March 11, 1994. OSM completed its reviews of the informal amendment and requested a formal proposal from Maryland in a letter dated August 6, 1996. By letter dated January 7, 1997 (Administrative Record No. MD-576-00), Maryland submitted a proposed amendment to its program pursuant to SMCRA at OSM's request.

Additionally, by letter dated January 14, 1997 (Administrative Record No. MD-552-13), Maryland submitted proposed amendments to its program pursuant to SMCRA. These amendments pertain to conditions of surety and collateral bonds, and procedures for release of general bonds and are intended to comply with required program amendments identified in 30 CFR 920.16 (k) and (m).

The provisions of the Code of Maryland Regulations (COMAR) that Maryland proposes to amend are as follows:

1. COMAR 26.20.26, Excess Spoil Disposal

Specifically, Maryland proposes to add new regulation .05 entitled "Placement of Excess Spoil on Abandoned Mine Land" to Chapter 26, Excess Spoil Disposal as follows:

a. New subparagraph A and items (1) through (5) state that excess spoil from a permitted coal mining operation may be placed on abandoned mine land outside of the permit area if the Department determines that the abandoned mine land is eligible for funding under Environment Article, Title 15, Subtitle 11, Annotated Code of Maryland; the abandoned mine land is referenced in the permit application and identified on the permit map; the plan for the placement of such spoil meets the design requirements of Maryland's approval program; the legal right to enter upon the abandoned mine land

and to place excess spoil on the area has been obtained from the surface owner; and the excess spoil will be placed in accordance with the provisions of a contract executed between the Department and the permittee for reclamation of the abandoned mine land.

b. New subparagraph B, entitled "Reclamation Standards", and items (1) through (4), are added to require that excess spoil beyond the amount required to restore the abandoned mine land to its original contour may not be placed on the abandoned mine land; the final configuration of the excess spoil that is placed on the abandoned mine land area outside of the permit area shall be compatible with the natural surroundings and be suitable for the intended land use; valley, head of hollow, or durable rock fills may not be constructed on abandoned mine land; and placement of excess spoil from a permit area on abandoned mine land shall be planned and implemented in accordance with the requirements of Maryland's approved program.

c. New subparagraph C and items (1) through (5) provide that placement of excess spoil from a permit area on abandoned mine land outside of a permit area may not be approved unless the Department finds in writing, on the basis of information set forth in the plan or otherwise available, that: placement of the excess spoil and reclamation of the abandoned mine land can be feasibly accomplished in accordance with the plan submitted by the operator; the excess spoil placement operation has been designed to prevent damage to the hydrologic balance outside of the abandoned mine land; the excess spoil placement operation will not adversely affect any publicly owned parks or places included in the National Register of Historic Places, unless approved by the appropriate jurisdictional agency; the applicant has submitted documentation establishing a legal right to enter and conduct the proposed reclamation on the abandoned mine land; and the proposed activities will not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats as determined under the Endangered Species Act.

d. New subparagraph D and items (1) through (3) state that placement of excess spoil from a permitted coal mining operation on abandoned mine land outside of the permit area shall be accomplished in accordance with a contract between the Department and the permittee that contains conditions that document the method of placement

of the excess spoil and reclamation on the area; require the operator to permit and bond the abandoned mine land area in the event the operator defaults on the contract; and authorize the Department to issue a cessation order to cease all mining operations on the adjacent permit area until the operator submits an application for a permit and the required amount of bond for the abandoned mine land area in the event the operator defaults on the contract.

e. New subparagraph E is added to state that the Department will monitor the placement of the excess spoil and the reclamation of the abandoned mine land area to ensure that the work is performed in accordance with the contract. In the event the operator fails to meet the terms of the contract, the Department shall issue a cessation order to stop the work on the area until the failure has been corrected.

2. COMAR 26.20.14.06, Conditions of Bonds

a. Subparagraph (B)(3) is amended to state that certificates of deposit be made payable to the Bureau. This paragraph formerly stated that such certificates of deposit shall be assigned to the Bureau in writing and upon the books of the bank issuing these certificates.

b. Subparagraph (B)(4) is amended by changing the denomination amount from \$40,000 to \$100,000.

c. New subparagraph (8) is added to require that the bank give prompt notice to the Bureau and the permittee of any notice received or action filed alleging insolvency or bankruptcy of the bank or the permittee, or alleging any violations of regulatory requirements which could result in suspension or revocation of the bank's charter or license to do business.

3. COMAR 26.20.14.09, Procedures for Release of General Bonds

a. Subparagraph (B)(2)(b) is revised by substituting the word "identify" for "show" and by adding the requirement to identify the approval date of the permit.

b. Subparagraph (B)(2)(c) and (d) are revised by submitting the word "identify" for "show" and (d) is further revised by adding the requirement to identify the type and amount of bond filed on the permit.

c. Subparagraph (B)(2)(e) is revised by requiring that the type and approximate dates of the work performed be summarized.

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 Maryland 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 Appalachian Regional Coordinating Center will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., E.S.T. on February 14, 1997. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak 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 speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak 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 speak 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 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

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 12988 (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 determinations 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 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 24, 1997.

Ronald C. Recker,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 97-2332 Filed 1-29-97; 8:45 am]

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30 CFR Part 938

[PA-117-FOR]

Pennsylvania 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 the receipt of a proposed amendment to the Pennsylvania permanent regulatory program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment (Administrative Record Number PA 843.00) revises the Pennsylvania program to incorporate changes made to Chapter 86 (relating to areas unsuitable for mining) by the Pennsylvania Environmental Quality Board. The proposed amendment is intended to clarify ambiguous language contained in Subchapter D concerning the designation of areas as unsuitable for mining, and to correct typographical errors.

DATES: Written comments must be received by 4 p.m., e.s.t. March 3, 1997. If requested, a public hearing on the proposed amendment will be held on February 24, 1997. Requests to speak at the hearing must be received by 4:00 p.m., e.s.t. on February 14, 1997.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Robert

J. Biggi, Director, Harrisburg Field Office at the address shown below.

Copies of the Pennsylvania 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 Harrisburg Field Office. 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**.

Robert J. Biggi, Director, Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717) 782-4036.

Pennsylvania Department of Environmental Protection, Bureau of Mining and Reclamation, Room 209 Executive House, 2nd and Chestnut Streets, P.O. Box 8461, Harrisburg, Pennsylvania 17105-8461, Telephone: (717) 787-5103.

FOR FURTHER INFORMATION CONTACT:

Robert J. Biggi, Director, Harrisburg Field Office, (717) 782-4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program

On July 31, 1982, the Secretary of the Interior conditionally approved the Pennsylvania program. Background information on the Pennsylvania program including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982, Federal Register (47 FR 33050). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Discussion of Amendment

By letter dated December 19, 1996 (Administrative Record Number PA 843.00), Pennsylvania submitted amendments to the regulations in the Pennsylvania program concerning designating areas unsuitable for coal surface mining. The amendments are intended to clarify ambiguous language contained in Subchapter D concerning the designation of areas as unsuitable

for mining, and to correct typographical errors.

The proposed amendments are as follows:

At § 86.101, in the definition of "fragile lands" two citations of the State Surface Mining Conservation and Reclamation Act are being amended.

At § 86.101, in the definition of "surface mining activities" the term that is being defined, "surface mining activities" is being changed to read "surface mining operations."

In various places, the term "surface mining activities" and "surface mining activity" are being amended to read "surface mining operations" and "surface mining operation," respectively.

In various places the word "surface" is being added to clarify that the term "surface mining operations" is intended.

In various places the word "activities" is being replaced by the phrase "surface mining operations."

At § 86.121(a) the citation for the State Surface Mining Conservation and Reclamation Act is being amended.

At § 86.130 (a) and (b), the word "all or certain types of" are being added to clarify that § 86.130 pertains to areas designated as unsuitable for all or certain types of surface mining operations.

Various other typographical, grammatical, style, and organizational name changes are being made throughout the amendment.

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 Pennsylvania satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Pennsylvania 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 Harrisburg Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., e.s.t. on February 14, 1997.