

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA-113-FOR]

Pennsylvania Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with certain exceptions, a proposed amendment to the Pennsylvania regulatory program (hereinafter referred to as the "Pennsylvania program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Pennsylvania proposed revisions and additions to its rules pertain to: surface and underground mining definitions, incidental coal extraction, permit approval, permit renewal, coal exploration, bonding, permit applications, operation and reclamation plans, environmental protection standards, anthracite bank removal and reclamation standards, refuse removal standards, coal preparation facilities, underground mining erosion and sedimentation control standards, impoundments, subsidence control, and coal refuse disposal permit applications and performance standards. The amendment is intended to revise the Pennsylvania program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: November 7, 1997.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

- I. Background on the Pennsylvania Program
- II. Submission of the Proposed Amendment
- III. Director's Findings
- IV. Summary and Disposition of Comments
- V. Director's Decision
- VI. Procedural Determinations

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, and the disposition of comments, and the conditions of approval can be found in the July 31, 1982, **Federal Register** (47 FR 33050). Subsequent actions concerning conditions of approval and program amendments can be found at 30 CFR 938.11, 938.12, 938.15, and 938.16.

II. Submission of the Proposed Amendment

By letter dated January 23, 1996 (Administrative Record No. PA-838.00), Pennsylvania submitted a proposed amendment to its program pursuant to SMCRA in response to the required program amendments at 30 CFR 938.16 (g) through (ii), with the exception of (h). Pennsylvania proposed to revise sections 86-90 of its Coal Mining Regulations (Regulatory Reform III).

OSM announced receipt of the proposed amendment in the February 28, 1996 **Federal Register** (61 FR 7446), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on March 29, 1996.

During its review of the amendment, OSM identified concerns relating to the following sections of Pennsylvania's regulations:

Section	Topic
86.5(i)3	Administrative Review.
86.5(m)	Notification.
No PA Counterpart	Public Comment Period, Inspections, Administrative Review.
86.55(j)	Permit Renewal Applications.
87.108(c), 89.24(c), 90.108(c).	Siltation Structures.
88.105(b), 88.106(a), 88.201(b), 88.202(a), 88.305(b), 88.306(a).	Water Monitoring.
88.321, 90.133	Noncoal Waste Disposal.
87.125(a)	Preblast Survey.
87.127(i)	Vibration Limit.
No PA Counterpart	Blast Monitoring.
87.124(b)	Blasting Schedule.
No PA Counterpart	Blast Design.
87.127(f)	Flyrock
87.129(4)	Blasting.

OSM notified Pennsylvania of these concerns by letter dated February 21, 1997. By letter dated March 28, 1997, Pennsylvania responded to OSM's concerns by submitting additional explanatory information and by proposing to make certain revisions to its regulations during its submission of Regulatory Reform IV. Because the additional information was explanatory in nature and did not constitute a major revision of the original submission, OSM did not reopen the comment period.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment. Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Revisions to Pennsylvania's Regulations That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

State regulation	Subject	Federal counterpart
86.1	Definition—"MSHA"	30 CFR 701.5.
86.1	Definitions—"Cumulative Measurement Period," "Cumulative Production," "Cumulative Revenue," "Mining Area," "Other Minerals."	30 CFR 702.5.
86.5(a)-(e)	Extraction of Coal	30 CFR 702.11 (a), (b), (d).
86.5(f)	Public Availability of Information	30 CFR 702.13.
86.5(g)	Application Requirements	30 CFR 702.12.
86.5(h) (excluding (h)(2)) ...	Exemption Requirements	30 CFR 702.11(c), 702.14.
86.5(i)(1), (2)	Exemption Determination	30 CFR 702.11(e)(1), (2).
86.5(j)(1)-(3)	Conditions of Exemption	30 CFR 702.15(a)-(c).
86.5(j)(4)	Reports	30 CFR 702.5(a)(2), 702.18.
86.5(k)	Stockpiling	30 CFR 702.16.

State regulation	Subject	Federal counterpart
86.5(l)	Compliance Review	30 CFR 702.17(a).
86.5(n)	Revocation	30 CFR 702.17(c)(3).
86.5(o)	Enforcement	30 CFR 702.17(c)(2).
86.55(g)(6)	Permit Renewal	30 CFR 774.15(c)(iv).
86.133(g)	Coal Exploration	30 CFR 815.15(g).
86.156(b)	Bonds	30 CFR 800.16(e)(1).
86.175(b)(3)	Bond Release	30 CFR 800.40(c)(2).
86.182(e)	Bond Forfeiture	30 CFR 800.50(b)(2).
86.182(f)(1)	Bond Forfeiture	30 CFR 800.50(d)(1).
87.46(b)(3)(i)	Surface Mines—Surface Water	30 CFR 780.21(b)(2).
87.69(b)(4)	Hydrologic Balance	30 CFR 780.21(i), (j).
87.127(e)(2)	Explosives—Surface Blasting	30 CFR 816.67(b)(1).
87.127(j)	Explosives—Surface Blasting	30 CFR 816.67(d)(3).
87.127(n)	Explosives—Surface Blasting	30 CFR 816.67(d)(2)(i).
87.127(p)	Explosives—Surface Blasting	30 CFR 816.67(d)(4).
87.131(n)	Disposal of Excess Spoil	30 CFR 816.71(h)(2).
87.135(a)	Protection of Underground Mining	30 CFR 816.79.
87.138(c)	Protection of Fish, Wildlife and Related Environmental Values	30 CFR 816.97(c).
88.24(b)(4)(i)	Anthracite Coal Mining	30 CFR 780.22(b)(2)(ii), (iii).
88.24(b)(4)(ii)	Anthracite Coal Mining	30 CFR 780.22(d).
88.26(b)(2)(i)	Anthracite—Surface Water	30 CFR 780.21(b)(2).
88.49(b)(2)	Anthracite—Hydrologic Balance	30 CFR 780.21(i).
88.54	Anthracite-Protection of Underground Mining	30 CFR 816.79.
88.61(b)(1)	Anthracite-Prime Farmlands	30 CFR 785.17(c)(1).
88.284	Anthracite-Sealing of Drilled Holes and Exploratory Openings	30 CFR 816.14.
88.491(d)(2)(A)	Anthracite—Surface Water	30 CFR 780.21(b)(2).
88.491(j)	Anthracite—Permit Applications	30 CFR 780.15(c).
88.492(d)(2)(iii)	Anthracite-Ground and Surface Water Monitoring Plans	30 CFR 780.21(i)(1), (j)(2).
89.34(a)(1)(iii), (2)(i), (2)(ii)	Hydrology-Underground Mining And Coal Preparation Facilities	30 CFR 784.14(h), (b)(2), (i).
89.82(d)	Performance Standards	30 CFR 817.97(c).
89.172(b)	Coal Preparation	30 CFR 785.21(c).
90.14(b)(3)(i)	Coal Refuse—Surface Water	30 CFR 780.21(b)(2).
90.35(b)(3)	Ground and Surface Water Monitoring Plans	30 CFR 780.21(i)(1), (j)(2).
90.150(c)	Protection of Fish, Wildlife and Related Environmental Values	30 CFR 816.97(c).

Because the above proposed revisions are identical in meaning to the corresponding Federal regulations, the Director finds that Pennsylvania's proposed rules are no less effective than the Federal rules.

B. Revisions to Pennsylvania's Regulations That Are Not Substantively Identical to the Corresponding Provisions of the Federal Regulations

1. 86.1/87.1—Definitions

Pennsylvania is proposing to amend the definition of "surface mining activities" to include the construction of a road or similar disturbance for any purpose related to a surface mining activity, including that of a moving or walking dragline or other equipment, or for the assembly or disassembly or staging of equipment. The Director finds that definition proposed by Pennsylvania is no less effective than the Federal definition at 30 CFR 700.5. The proposed revision also satisfies the required amendment at 30 CFR 938.16(g) which required Pennsylvania to amend its definition to make it clear that the construction of any road, or similar disturbance, shall be deemed a surface mining activity and will be regulated.

2. 86.5(h)(2)—Extraction of Coal

Pennsylvania is proposing to require in this subsection that no request for an exemption will be approved unless the applicant can show that the coal to be produced will be from the geological stratum above the deepest stratum from which other minerals are extracted for purposes of bona fide sale or reasonable commercial use. The corresponding Federal regulation, at 30 CFR 702.14(a)(2), contains the same requirement, except that it allows the exemption to be approved if the coal to be produced is in the geological stratum lying above or below the deepest stratum from which other minerals are extracted. Because Pennsylvania limits the exemption allowance to where the coal is produced above the deepest stratum from which other minerals are extracted, it is more restrictive, and therefore more stringent, than its Federal counterpart. In accordance with section 505(b) of SMCRA (30 U.S.C. 1255(b)) and 30 CFR 730.11(b), therefore, subsection 86.5(h)(2) is not inconsistent with SMCRA.

3. 86.5(l)(3)—Exemption Determinations

Pennsylvania is proposing to permit a person who is adversely affected by the determination of exemption to file an

appeal as provided by Chapter 21 of the regulations. The proposed regulation is substantively identical to the Federal regulations at 30 CFR 702.11(f)(1). However, the Federal regulations at 30 CFR 702.11(f)(2) specify that such appeals shall not suspend the effect of that determination. In its letter dated March 28, 1997, Pennsylvania stated that appeals to the Environmental Hearing Board (EHB) under the provisions of Chapter 21 do not stay the effect of the Department of Environmental Protection's (Department) actions. If an appellant wishes to stay the effect of such an action, the appellant must petition the EHB which, in turn, must issue a supersedeas. The Director finds the proposed Pennsylvania regulation no less effective than the Federal regulations, since Pennsylvania law provides, generally, that an appeal does not, by itself, suspend the effect of the decision appealed from.

4. 86.5(m)—Notification

Pennsylvania is proposing to require that if the Department believes that a specific mining area was not exempt at the end of the previous reporting period, or is not exempt or cannot satisfy the exemption criteria at the end of the

current reporting period, it will notify the operator that the exemption may be revoked and explain the reasons. The exemption will be revoked unless the operator demonstrates within 30 days that the area in question should continue to be exempt. The operator and interested parties will be notified immediately of the revocation. The Federal regulations at 30 CFR 702.17(b) and (c)(1) have the same requirements. However, the Federal regulations also specify that if a decision is made not to revoke an exemption, the regulatory authority shall immediately notify the operator and intervenors. The Director finds that the proposed Pennsylvania regulation is less effective than the Federal regulations because it lacks this notification requirement. He is, therefore, requiring that Pennsylvania amend its program to include the notification requirement to operators and intervenors of a Department's decision not to revoke an exemption.

5. 86.55(i), (j)—Permit Renewals

Pennsylvania is proposing at subsection (i) to allow a permittee to provide a written notice to the Department in lieu of a complete application if, after the permit expiration date, the remaining surface mining activities will consist solely of reclamation. The Department may renew the permit conditioned upon only reclamation activities occurring. A new permit is required if the permittee resumes coal extraction, preparation, or refuse disposal. At subsection (j), Pennsylvania is proposing to require that a permittee submit a renewal application if he has provided written notice in accordance with the terms of subsection (i) and determines prior to the permit expiration date that coal extraction, preparation, or refuse disposal will occur or treatment facilities will be required after the permit expiration date. The Federal regulations at 30 CFR 773.11(a) allow a permittee to forego permit renewal where only reclamation activities remain to be performed, but require that permit obligations continue until reclamation is complete. Subsection (i), as proposed, contains a similar provision, in that it provides that the permit will be renewed even where only reclamation obligations remain, but requires only a notice of renewal in such instances, rather than a complete renewal application, with public notice. Therefore, subsection (i) is no less effective than 30 CFR 773.11(a). However, the Federal regulations at 30 CFR 774.15(b)(1) require that an application for permit renewal be submitted at least 120 days before

expiration of the existing permit term. Pennsylvania's proposed revision at subsection (j) does not contain this provision. Therefore, the Director finds that it is less effective than the Federal regulations, and he is requiring that Pennsylvania amend its regulation to include the 120 day submittal requirement.

6. 86.134(8)—Coal Exploration

Pennsylvania proposes to require that each coal exploration hole, borehole, well, or other underground opening created or encountered by exploration must meet the requirements of its program relating to preventing discharges from underground mines, and closing of underground mine openings. The Federal counterpart regulation, at 30 CFR 815.15(g), contains these same requirements, except that it applies only to holes, etc., which are created during coal exploration, and not to holes encountered during coal exploration. As such, Pennsylvania's proposal is more inclusive, and therefore more stringent, than its Federal counterpart. In accordance with section 505(b) of SMCRA (30 U.S.C. 1255(b)) and 30 CFR 730.11(b), therefore, subsection 86.134(8) is not inconsistent with SMCRA.

7. 86.182(f)(2)—Bond Forfeiture

Pennsylvania is proposing to require that if the bond amount forfeited by the permittee is more than the amount necessary to complete the reclamation, the excess funds shall be used by the Department for certain prescribed purposes specified in subsection 18(a) of the Pennsylvania Surface Mining Act. The Federal regulations at 30 CFR 800.50(d)(2) require the regulatory authority to return any unused funds to the party from whom they were collected. However, Pennsylvania considers the excess funds to be a penal bond and reserves the right to apply the funds to approved purposes. The Director finds that the proposed Pennsylvania revision is, in effect, more stringent than the Federal regulations. Therefore, in accordance with section 505(b) of SMCRA (30 U.S.C. 1255(b)) and 30 CFR 730.11(b), subsection 86.182(f)(2) is not inconsistent with SMCRA.

8. 86.193(h)—Civil Penalties

Pennsylvania is proposing to delete the provision that the Department may, when appropriate, assess a penalty against corporate officers, directors, or agents as an alternative to, or in combination with, other penalty actions. This provision currently appears in Pennsylvania's regulations at 86.195(a).

The Director finds that the proposed deletion will not render the Pennsylvania program less effective than the Federal regulations at 30 CFR 846.12(a). However, the Director notes that Pennsylvania must still amend subsections 86.195(a) and (b), or otherwise amend its program, as directed at 30 CFR 938.16(eee).

9. 87.45(a)(4), 88.25(a)(4), 88.491(c)(1)(iv), 89.34(a)(1)(i), 90.131(1)—Surface Coal Mines, Anthracite (General Provisions), Anthracite (Coal Preparation Facilities), Underground Coal Mines, Coal Refuse Disposal: Groundwater

Pennsylvania is proposing to require that a permit applicant supply certain baseline information pertaining to groundwater, including water quality descriptions of total dissolved solids or specific conductance corrected to 25 degrees centigrade, pH, total iron, total manganese, alkalinity, acidity, and sulfates. The counterpart Federal regulations, at 30 CFR 780.21/784.14(b)(1), also require water quality descriptions, but do not specifically require descriptions of alkalinity, acidity or sulfates. As such, the Pennsylvania proposals are more stringent than their Federal counterparts. Therefore, in accordance with section 505(b) of SMCRA (30 U.S.C. 1255(b)) and 30 CFR 730.11(b), these Pennsylvania proposed amendments are not inconsistent with SMCRA.

10. 87.46(b)(c)(ix)—Surface Water Information: Surface Coal Mines/88.26(b)(2)(ix)—Surface Water Information: Anthracite Surface Mines/88.491(d)(2)(ii)(I), (J)—Surface Water Information: Anthracite Underground Mines/90.14(b)(3)(ix)—Surface Water Information—Coal Refuse Disposal

Pennsylvania is proposing to require that a permit application include surface water information that specifies total aluminum in milligrams per liter. The Federal regulations at 30 CFR 780.21/784.14(b)(2) do not include this provision but rather require minimum water quality descriptions which Pennsylvania's program already requires. Also, Pennsylvania is requiring other surface water information, as appropriate. The Federal regulations at 30 CFR 780.21/784.14(b)(2) also do not include this provision. As such, the Pennsylvania proposals are more stringent than their Federal counterparts. Therefore, in accordance with section 505(b) of SMCRA (30 U.S.C. 1255(b)) and 30 CFR 730.11(b), these Pennsylvania proposed

amendments are not inconsistent with SMCRA.

11. 87.54(b)/87.65(b)—Maps, Cross Sections and Related Information: Surface Mines/88.31/88.44(b)—Maps and Plans: Anthracite Surface Mines/88.492(j)(3)—Maps and Plans: Anthracite Underground Mines/90.21(b), 90.46(3)—Maps and Plans: Coal Refuse Disposal

Pennsylvania is proposing to require that qualified professional geologists also be registered in order to prepare and certify maps, plans, and cross sections. The corresponding Federal regulations, at 30 CFR 779.25(b) (for 87.54(b) and 88.31(b)), 780.14(c) (for 87.65(b) and 88.44(b)), and 784.23(c) (for 88.492(j)(3)), require only that the geologist be a professional. However, Pennsylvania may require, additionally, that the geologist be a registered professional. As such, the Pennsylvania proposals are more stringent than their Federal counterparts. Therefore, in accordance with section 505(b) of SMCRA (30 U.S.C. 1255(b)) and 30 CFR 730.11(b), these Pennsylvania proposed amendments are not inconsistent with SMCRA.

12. 87.69(b)(5)—Hydrologic Balance: Surface Mines/88.49(b)(3)—Hydrologic Balance: Anthracite Surface Mines/88.492—Reclamation and Operation Plan: Anthracite

Pennsylvania is proposing to require that the determination of probable hydrologic consequences (PHC) address the parameters measured in accordance with subsections 87.45, 87.46, 88.25, 88.26, and 88.491. The Federal regulations at 30 CFR 780.21(f)(2) require the PHC to be based upon baseline hydrologic information contained in the permit application. This baseline information is collected for the same ground and surface water parameters which are required to be measured pursuant to subsection 87.45, 87.46, 88.25 and 88.26. Therefore, the Director finds that the proposed Pennsylvania regulations are no less effective than the Federal regulations at 30 CFR 780.21(f).

13. 87.73—Dams, Ponds, Embankments, and Impoundments: Surface Mines/90.111(7), 90.113(i), 90.120—Impoundments: Coal Refuse Disposal

At subsection 87.73(c)(1), Pennsylvania is proposing to revise its requirements for detailed design plans for dams, ponds, embankments and impoundments. Engineers, when necessary, will obtain assistance from experts in related fields when preparing design plans for impoundments meeting

or exceeding MSHA size classification or other specified criteria. For those impoundments not meeting the size classification or other criteria, the plan shall be prepared by a qualified engineer or land surveyor. The Federal regulations at 30 CFR 780.25(a) (2) and (3) have the same requirements. Therefore, the Director finds that the proposed Pennsylvania regulation is no less effective than the Federal regulations. The proposed revision also satisfies the required amendment at 30 CFR 938.16(s) which required Pennsylvania to clarify that all impoundments with a storage volume of 20 acre-feet or more must be designed by or under the direction of, and certified by, a qualified registered professional engineer with assistance from experts in related fields.

At subsections 87.73(c)(4), 90.111(7) and 90.113(i), and at section 90.120, Pennsylvania is proposing to prohibit the permanent retention of an impounding structure constructed of coal refuse or used to impound coal refuse unless it develops into a fill meeting the coal refuse disposal requirements of section 90.122. The Federal regulations at 30 CFR 816.84(b)(1) also prohibit permanent impoundments on coal refuse or coal refuse impounding structures, but contain no exceptions for the development of a fill. However, subsection 90.122(j) of Pennsylvania's regulations does prohibit the retention of permanent impoundments on a completed fill. By cross-referencing subsection 90.122(j), these provisions contain the necessary prohibition of permanent impoundments. Therefore, the Director finds that the proposed Pennsylvania regulations are no less effective than the Federal regulations at 30 CFR 816.84(b)(1).

14. 87.102(a)—Effluent Standards: Surface Mines/88.92(a)—Effluent Standards: Anthracite Surface Mines/88.187(a)—Effluent Standards: Anthracite Bank Removal/88.292(a)—Effluent Standards: Anthracite Refuse Disposal/89.52(c)—Effluent Standards: Underground Mining and Coal Preparation Facilities/90.102(a)—Effluent Standards: Coal Refuse Disposal

Pennsylvania is proposing to revise the instantaneous maximum level for manganese to 5.0 mg/l for its Group "B" effluent limitations, and to add instantaneous maximum discharge levels for manganese (5.0 mg/l) and suspended solids (90 mg/l) to its Group "A" effluent limitations. (Group "A" effluent limitations apply to pit water discharges in all types of weather, and

to all other discharges in dry weather or during very low precipitation events. Group "B" effluent limitations apply to discharges, other than pit water, during precipitation events of up to 10 years and 24 hours.) The Director notes that the Clean Water Act effluent limitations applicable to coal mining operations, at 40 CFR Part 434, do not contain instantaneous maximum limits for manganese or suspended solids. Therefore, Pennsylvania's proposals are in addition to the requirements of the Clean Water Act regulations. Also, the Director notes that the Environmental Protection Agency, in its letter of concurrence with this program amendment, stated that the addition of these instantaneous maximum limits will "provide inspectors an enforceable compliance measure without the necessity of obtaining time consuming composite samples." (Administrative Record No. 838.08). There are no Federal counterparts in SMCRA or the Federal regulations promulgated thereunder to these proposed revisions. However, 30 CFR 816/817.42 require that discharges of water from surface mining operations be made in compliance with, among other things, the effluent limitations contained in 40 CFR Part 434. Because the Environmental Protection Agency has concurred in the approval of this amendment, the Director finds that the proposed Pennsylvania revisions are consistent with the Federal regulations at 30 CFR 816/817.42.

15. 87.108(c)—Sedimentation Ponds: Surface Coal Mines/89.24(c)—Sedimentation Ponds: Underground Mines and Coal Preparation Facilities/90.108(c)—Sedimentation Ponds: Coal Refuse Disposal

Pennsylvania is proposing to require that sedimentation ponds be maintained until the disturbed area has been stabilized and revegetated and removal is approved by the Department. The ponds may not be removed sooner than 2 years after the last augmented seeding, unless the Department finds that the disturbed area has been sufficiently revegetated and stabilized. Pennsylvania is also proposing to delete the references to "other treatment facilities." This deletion is presumably proposed because the Pennsylvania regulations, at sections 87.108, 89.24 and 90.108, require all drainage to be passed through sedimentation ponds, rather than through "other treatment facilities." Therefore, the deletion is approved to the extent that "other treatment facilities" are not permitted to be used to treat surface drainage. However, the Federal regulations at 30

CFR 816/817.46(b)(5) prohibit the removal of siltation structures sooner than 2 years after the last augmented seeding.

Because Pennsylvania's proposal includes an exception to this requirement, the Director finds that the proposed Pennsylvania revision is less effective than the Federal regulations. He is also requiring that Pennsylvania amend its regulation to require, without exception, that sedimentation ponds, where used, and other treatment facilities, if used, cannot be removed sooner than 2 years after the last augmented seeding.

16. 87.112—Hydrologic Balance: Surface Mines/88.102—Hydrologic Balance: Anthracite Surface Mines/88.197—Hydrologic Balance: Anthracite Bank Removal/88.302—Hydrologic Balance: Anthracite Refuse Disposal/89.101 and 112—Impoundments: Underground Mines/90.112—Hydrologic Balance: Coal Refuse Disposal

At subsections 87.112(b), 88.102(b), 88.197(b), 88.302(b), 89.112, and 90.112(b), Pennsylvania is proposing to require a minimum static safety factor of 1.3 for dams, ponds, embankments, and impoundments. At subsections 87.112(b)(1) and 89.101(a), Pennsylvania is proposing to require that impoundments that meet or exceed MSHA size classification of 30 CFR 77.216(a) be designed and certified by a qualified registered professional engineer with assistance, as necessary, from experts in related fields. Impoundments not meeting or exceeding MSHA size classification are to be designed and certified by a qualified registered professional engineer or land surveyor. Each impoundment shall be certified that it has been constructed and is being maintained as designed in accordance with the approved plan and performance standards. At subsection 90.112(b)(1), Pennsylvania is proposing to require that each impoundment be certified that it has been constructed or is being maintained as designed in accordance with applicable performance standards. The Federal regulations at 30 CFR 780.25/784.16(a)(2), and (3) specify the design, certification, and stability requirements for impoundments. The Federal regulations at 816/817.49(a)(4)(ii) contain the 1.3 static safety factor requirement for impoundments not meeting the size or other criteria of 30 CFR 77.216(a). The Director finds that the proposed Pennsylvania revisions are substantively identical to these requirements in the Federal regulations. The proposed

revision also satisfies two required amendments. At 30 CFR 938.16(t), Pennsylvania was required to ensure that all impoundments which meet or exceed the MSHA size classification are designed and certified by or under the direction of a qualified registered professional engineer. At 30 CFR 938.16(u), Pennsylvania was required to ensure that all impoundments be certified that they have been constructed and are being maintained as designed in accordance with the approved plan and performance standards.

At subsections 87.112(d) and 89.101(b), Pennsylvania is proposing to require that impoundments that meet or exceed the MSHA size classification or other criteria of 30 CFR 77.216(a) be inspected and certified by a qualified registered professional engineer. Impoundments not meeting or exceeding the MSHA size classification or criteria are to be inspected during construction and certified after construction and annually thereafter by a qualified registered professional engineer or land surveyor until removal of the structure or release of the performance bond. The engineer or surveyor must be experienced in the construction of impoundments. The Federal regulations at 30 CFR 816/817.49(a)(11) contain these same inspection requirements for impoundments. Therefore, the Director finds that the proposed Pennsylvania revisions are substantively identical to these requirements in the Federal regulations.

At subsections 87.112(f), 89.101(d), and 90.112(f), Pennsylvania is proposing to clarify that it will consider MSHA's review for impoundments. It will, however, review impoundments as required under subsection (a). The Director finds that the proposed Pennsylvania revision is substantively identical to the Federal regulations at 30 CFR 780.25/784.16(c)(2), pertaining to reclamation plans for impoundments. The proposed revision also satisfies the required amendment at 30 CFR 938.16(v) which allows Pennsylvania to consider MSHA's action on plans for impoundments but requires it to make its own findings with respect thereto.

17. 87.116—Hydrologic Balance: Groundwater Monitoring—Surface Mines/87.117—Hydrologic Balance: Surface Water Monitoring—Surface Mines/88.105—Hydrologic Balance: Groundwater Monitoring—Anthracite Mines/88.106—Hydrologic Balance: Surface Water Monitoring—Anthracite Surface Mines/88.201—Hydrologic Balance: Groundwater Monitoring—Anthracite Bank Removal/88.202—Hydrologic Balance: Surface Water Monitoring—Anthracite Bank Removal/88.305—Hydrologic Balance: Groundwater Monitoring—Anthracite Refuse Disposal/88.306—Hydrologic Balance: Surface Water Monitoring—Anthracite Refuse Disposal/90.115—Hydrologic Balance: Groundwater Information—Coal Refuse Disposal Performance Standards/90.116—Hydrologic Balance: Surface Water Monitoring—Coal Refuse Disposal Performance Standards

At subsections 87.116(b), 88.105(b), 88.201(b), 88.305(b), 90.115(b), 87.117(a), 88.106(a), 88.202(a), 88.306(a), and 90.116(a), Pennsylvania is proposing to identify the minimum monitoring requirements for groundwater and surface water. These monitoring requirements include: total dissolved solids or specific conductance corrected to 25 degrees C, pH, acidity, alkalinity, total iron, total manganese, sulfates, and water levels. The information is to be reported to the Department every 3 months for each location. At 87.116(d), 88.105(d), 88.201(d), 88.305(d), 90.115(d), 87.117(b), 88.106(b), 88.202(b), 88.306(b), and 90.116(b), the Department is authorized to require monitoring and reporting more frequently than every 3 months and to monitor additional parameters beyond the minimum specified in this section. The Director finds that Pennsylvania's revisions contain the same requirements, and are therefore substantively identical to, the Federal regulations at 30 CFR 780.21 (i) and (j), pertaining to ground and surface water monitoring, except that the Federal regulations do not require the monitoring of acidity, alkalinity, or sulfates. As such, the Pennsylvania proposals are more stringent than their Federal counterparts. Therefore, in accordance with section 505(b) of SMCRA (30 U.S.C. 1255(b)) and 30 CFR 730.11(b), these Pennsylvania proposed amendments are not inconsistent with SMCRA.

18. 87.127—Use of Explosives: Blasting

At subsection (h), Pennsylvania is proposing to require that maximum

peak particle velocity may not exceed the values approved in the blast plan. It also includes frequency of vibration as a factor that the Department may consider in reducing the maximum peak particle velocity allowed. The Director finds that the proposed revision is no less effective than the Federal regulations at 30 CFR 816.67(d)(1) and (d)(5) pertaining to ground vibrations. The proposed revision also satisfies the required amendment at 30 CFR 938.16(y) which required Pennsylvania to ensure that all structures in the vicinity of the blasting area be protected from damage by establishing maximum allowable limits on the ground vibration.

At subsection (i)(2), Pennsylvania is proposing to exempt from maximum peak particle velocity limitations those structures located on the permit area when the owner and lessee, if leased to another party, of the structure have each signed a waiver releasing the vibration limit. The Federal regulations at 30 CFR 816.67(e)(1) and (2) exempt those structures outside the permit area owned by the permittee and not leased, or owned and leased with a written waiver by the lessee. The Federal peak particle velocity limitations do not apply, however, to structures inside the permit area. In its letter dated March 28, 1997, Pennsylvania states that while OSM's general provisions pertaining to the prevention of the adverse effects of explosives apply only to damage outside the permit area, Pennsylvania allows a waiver of vibration limits inside the permit area only, where the Federal peak particle velocity limitations do not apply anyway. Pennsylvania does not permit waivers outside the permit area and, as such, provides additional protection against damage. Therefore, the Director finds that the proposed revision is not inconsistent with SMCRA.

At subsection (k), Pennsylvania is proposing to require that a seismograph record become part of the blast record within 30 days after it obtained. It shall be analyzed by a qualified independent party. The Director notes that the proposed revisions adds requirements not contained in the Federal regulations at 30 CFR 816.67(d)(2) which require seismograph records for each blast. However, these additional provisions are consistent with the Federal requirement to keep a seismographic record and, therefore, can be approved.

19. 87.129(4)—Use of Explosives: Blasting Records

Pennsylvania is proposing to require that the blast record include the direction and distance, in feet, to the

nearest public building and other structures. The Federal regulations at 30 CFR 816.68(d) require only that the blast record include the direction and distance, in feet, from the nearest blasting hole to the nearest dwelling, public building, school, church, community or institutional building outside the permit area. However, as noted in Finding 18, above, Pennsylvania applies its air blast and ground vibration standards to buildings within the permit area as well as outside the permit area. As such, Pennsylvania's program is more stringent than the Federal regulations. In order to be consistent with its own requirements, Pennsylvania has amended its blast record provisions to include the direction and distance to the nearest building, regardless of whether the building is located within or outside of the permit area. In accordance with section 505(b) of SMCRA (30 U.S.C. 1255(b)) and 30 CFR 730.11(b), this proposed amendment is not inconsistent with SMCRA.

20. 87.136—Disposal of Noncoal Wastes: Surface Mines/88.321—Disposal of Noncoal Wastes: Anthracite Refuse Disposal/89.63—Disposal of Noncoal Wastes: Underground Mining and Coal Preparation Facilities/90.133—Disposal of Noncoal Wastes: Coal Refuse Disposal

Pennsylvania is proposing to require that noncoal wastes be disposed of or temporarily stored in accordance with the Solid Waste Management Act and related regulations. This requirement is no less effective than the Federal regulations at 30 CFR 816/817.89(b), which provides for final disposal of noncoal wastes in a State approved solid waste disposal area. However, sections 88.321 and 90.133 state that waste materials with low ignition points may not be deposited on or near a coal refuse disposal pile. The Federal regulation at 30 CFR 816.89(c) does not permit any noncoal waste to be deposited in a refuse pile or impounding structure. Pennsylvania's prohibition applies only to its listed materials and other waste materials with low ignition points. Therefore, the Director finds that the proposed Pennsylvania revisions to sections 88.321 and 90.133 are less effective than the Federal regulation. He is also requiring that Pennsylvania amend its program to prohibit any noncoal waste from being deposited in a refuse pile or impounding structure.

21. 88.105(c)—Groundwater Monitoring: Anthracite Mines/88.201(c)—Groundwater Monitoring: Anthracite Bank Removal/88.305(c)—Groundwater Monitoring: Anthracite Refuse Disposal

Pennsylvania is proposing to permit the Department to require the operator to conduct additional hydrologic tests to demonstrate compliance with the regulations. The Federal regulations at 30 CFR 780.21(b)(3) require this additional testing where the PHC determination indicates that adverse impacts may occur to the hydrologic balance, or that acid-forming or toxic-forming material is present that may result in the contamination of surface or ground water supplies. Therefore, subsections 88.105(c), 88.201(c) and 88.305(c) are less effective in that they merely allow, but do not require, additional testing as appropriate, and the Director is requiring Pennsylvania to amend its program to require such additional hydrologic testing whenever the PHC determination indicates that adverse impacts may occur to the hydrologic balance, or that acid-forming or toxic-forming material is present that may result in the contamination of surface or ground water supplies.

22. 88.381(c)(7)—Coal Preparation Facilities

Pennsylvania is proposing to require that an application include monitoring plans and that surface and ground water information, as well as monitoring plans, be presented in accordance with its regulations pertaining to ground and surface water information. There is no direct Federal counterpart to this proposed amendment. However, the Director finds that the proposed Pennsylvania revision is consistent with the Federal regulation at 30 CFR 785.21, which requires that an operator obtain a permit to operate a coal preparation plant outside the permit area for a specific mine, and that the permit demonstrate that the applicant will comply with the performance standards at 30 CFR Part 827, which standards include the requirement to comply with the Federal regulations at 30 CFR 816.41, pertaining to protection of the hydrologic balance.

23. 89.142(a)(6)(vii)—Maps: Underground Mines and Coal Preparation Facilities

Pennsylvania is proposing to require that maps identify major electric transmission lines by name or numerical reference. While there is no direct Federal counterpart to this requirement, the Director finds that the

proposed Pennsylvania revision is consistent with the Federal regulations at 30 CFR 783.24(e), pertaining to permit application maps, which requires that such maps show the location of major electric transmission lines and pipelines.

24. 89.143(b)(3)(i)(B)—Performance Standards: Underground Mines and Coal Preparation Facilities

Pennsylvania is proposing to require that a pillar lying partially within the support area be considered part of the support area and be consistent with the other support pillars in size and pattern. While this provision has no direct Federal counterpart, the Director finds that it is consistent with the Federal regulations at 30 CFR 784.20(b)(5), pertaining to subsidence control plans, which allows operators the option of leaving pillars of coal in order to prevent or minimize subsidence.

25. 90.39(e)—Impoundments: Coal Refuse Disposal

Pennsylvania is proposing to require that permit application plans provide for the removal of impoundments constructed of or used to impound coal refuse as part of site reclamation. The Director finds that the proposed Pennsylvania revision is no less effective than the Federal regulations at 30 CFR 816/817.84(b)(1) which prohibit the permanent retention of such structures.

26. 90.122—Coal Refuse Disposal

Pennsylvania is proposing, at subsection (j), to delete all exceptions to the prohibition against retaining permanent impoundments or depressions in a completed coal refuse disposal fill. The Director finds that this deletion renders subsection 90.122(j) no less effective than the Federal regulations at 30 CFR 816.84(b)(1), which prohibits the retention of permanent impounding structures constructed of coal mine waste or intended to impound coal mine waste.

27. 90.130—Coal Refuse Dams: Coal Refuse Disposal

Pennsylvania is proposing to delete the provision prohibiting the permanent retention of coal refuse dams as part of the approved postmining landuse. However, because the structures must comply with subsection 90.122(j), which contains the prohibition, the Director finds that the proposed Pennsylvania revision is no less effective than the Federal regulation at 30 CFR 816.84(b)(1).

C. Revisions to Pennsylvania's Regulations With No Corresponding Federal Regulations

1. 77.3(b)—Relationship to Coal Mining

Pennsylvania is proposing to add the provision that the incidental extraction of coal under subsection (a) will conform to section 86.5 pertaining to extraction of coal incidental to noncoal surface mining. There is no Federal counterpart to this provision. However, the Director finds that the proposed regulation is not inconsistent with the requirements of SMCRA and the Federal regulations, which do contain counterparts to the requirements of section 86.5.

2. 86.37(b)—Permits

Pennsylvania is proposing to prohibit an incremental phase approval of a permit if the Department has already issued an incremental phases approval for the area to another permittee, except for an area used for access or haul roads. There is no Federal counterpart to this provision. However, incremental phase approvals of permits are already included in Pennsylvania's approved program, in this same subsection. Therefore, the Director finds that the proposed revision does not render the Pennsylvania program inconsistent with the requirements of SMCRA or the Federal regulations.

3. 86.55(c)—Permit Renewals

Pennsylvania is proposing to require that if a permittee provides a written notice under section (i) pertaining to permits conditioned upon only reclamation activity being performed, the notice shall be filed with the Department at least 180 days before the expiration date of the permit. There is no direct Federal counterpart to this provision. However, the Director finds that the proposed revision is consistent with the Federal regulations at 30 CFR 773.11(a), which allows permittees to forego obtaining permit renewals where only reclamation activities remain to be performed.

4. 87.92(g)—Signs and Markers: Surface Mines/88.82(c)—Signs and Markers: Anthracite Mines/88.182(b)—Signs and Markers: Anthracite Bank Removal/88.282(c)—Signs and Markers: Anthracite Refuse Removal/89.51(h)—Signs and Markers: Underground Mining and Coal Preparation Plans/90.92(g)—Signs and Markers: Coal Refuse Disposal

Pennsylvania is proposing to require that ground and surface water monitoring locations and sampling points used to obtain background

information be clearly marked and identified. The requirement may be waived if the monitoring locations or sampling points are obvious or if marking would be objectionable for aesthetic reasons. The Federal regulations at 30 CFR 816/817.11 do not contain this requirement. However, the Director finds that the proposed revisions, which are in addition to the requirements of the Federal regulations, are not inconsistent with SMCRA, in accordance with SMCRA section 505(b) (30 U.S.C. 1255(b)), and 30 CFR 730.11(b).

5. 87.93(d)—Casing and Sealing of Drilled Holes: Surface Mines/88.83(d)—Sealing of Drilled Holes: Anthracite Mines/88.283(d)—Sealing of Drilled Holes—Anthracite Refuse Removal/89.141(d)(4)(ii)—Subsidence Control: Underground Mines

Pennsylvania is proposing to require that gas and oil wells be sealed in accordance with the *Oil and Gas Act (58 P.S.sections 601.101–601.605)*. The Federal regulations at 30 CFR 816/817.13 do not contain this requirement. However, the Director finds that the proposed revisions are in addition to those requirements, and are therefore not inconsistent with SMCRA, in accordance with SMCRA section 505(b) (30 U.S.C. 1255(b)), and 30 CFR 730.11(b).

6. 89.144(a)—Public Notice: Underground Mines and Coal Preparation Facilities

Pennsylvania is proposing to require that coal operators provide the Department with a copy of the required notice of intention to mine and return receipt or, if applicable, evidence that the notice was not accepted or deliverable. The Federal regulations contain no direct counterpart requirement. However, the Director finds that the proposed revision is consistent with the Federal regulations at 30 CFR 817.122, which requires notification to all owners of surface property overlying the proposed underground mining operation of the intent to mine.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to speak at a public hearing, no hearing was held.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Pennsylvania program. The U.S. Department of Labor, Mine Safety and Health Administration (District 1) and the U.S. Department of the Interior, Fish and Wildlife Service concurred without comment. The U.S. Department of Labor, Mine Safety and Health Administration (District 2) commented that while Pennsylvania's proposed regulations do not permit impounding structures constructed of coal refuse or used to impound coal refuse to be retained permanently, 30 CFR Parts 75 and 77 do not have the same prohibition. The Director notes that Pennsylvania's revisions comply with and are no less effective than the Federal regulations at 30 CFR 816/817.84(b)(1).

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

On January 25, 1996, OSM solicited EPA's concurrence with the proposed amendment. On March 14, 1996, EPA gave its written concurrence (Administrative Record No. PA-838.08).

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP. None were received.

V. Director's Decision

Based on the above findings, the Director approves with certain exceptions and additional requirements, the proposed amendment as submitted by Pennsylvania on January 23, 1996. He is also requiring that Pennsylvania amend its program to make the following changes. At 86.5(m), Pennsylvania must provide for notification of the operator and any intervenors of a decision not to revoke an exemption. At 86.55(j), Pennsylvania must require that any applications for permit renewal be submitted at least 120 days before the permit expiration date. At 87.108(c), 89.24(c), and 90.108(c), Pennsylvania must require, without exception, that sedimentation ponds cannot be removed sooner than two

years after the last augmented seeding. If sedimentation ponds are not always deemed to be the best technology currently available, any "other treatment facilities" used must also remain in place for at least two years after the last augmented seeding. At 88.105(c), 88.201(c), and 88.305(c), Pennsylvania must require additional hydrologic testing whenever the PHC determination indicates that adverse impacts may occur to the hydrologic balance, or that acid-forming or toxic-forming material is present that may result in the contamination of surface or ground water supplies. At 88.321 and 90.133, Pennsylvania must require that no noncoal waste be deposited in a coal refuse pile or impounding structure. Pennsylvania must also provide counterparts to the Federal regulations at 30 CFR 702.15(d), (e), (f), and 702.17(c)(2), and (c)(3). The Federal regulations require that authorized representatives have the right to enter operations conducting incidental coal extraction and that administrative reviews of the State's determinations be provided.

The Director is removing the following required amendments at 30 CFR 938.16 because they have been satisfied by revisions contained in this submission.

Required Amendment Removed/State Regulation That Satisfies Requirement

30 CFR 938.16(g)	86/87.1.
30 CFR 938.16(l)	86.156(b).
30 CFR 938.16(q)	86.182(e).
30 CFR 938.16(s)	87.73(c)(1).
30 CFR 938.16(t)	87.112(b)(1), 89.101(a).
30 CFR 938.16(u)	87.112(b)(1), 90.112(b)(1).
30 CFR 938.16(v)	87.112(f), 89.101(d), 90.112(f).
30 CFR 938.16(x)	87.127(e)(2).
30 CFR 938.16(y)	87.127(h).
30 CFR 938.16(z)	87.127(j).
30 CFR 938.16(aa)	87.127(n).
30 CFR 938.16(bb)	87.131(n).
30 CFR 938.16(cc)	87.135(a).
30 CFR 938.16(dd)	87.138(c), 89.82(d), 90.150(c).
30 CFR 938.16(ee)	88.24(b)(4)(i).
30 CFR 938.16(ff)	88.61(b)(1).
30 CFR 938.16(gg)	88.491(j).
30 CFR 938.16(ii)	89.34(a)(2)(ii).
30 CFR 938.16(jj)	86.172(b).
30 CFR 938.16(ddd)	86.133(g).

In accordance with 30 CFR 732.17(f)(1), the Director is also taking this opportunity to clarify in the required amendment section at 30 CFR 938.16 that, within 60 days of the publication of this final rule, Pennsylvania must either submit a proposed written amendment, or a description of an amendment to be

proposed that meets the requirements of SMCRA and 30 CFR Chapter VII and a timetable for enactment that is consistent with Pennsylvania's established administrative or legislative procedures.

The Federal regulations at 30 CFR Part 938, codifying decisions concerning the Pennsylvania program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decisions

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Pennsylvania program, the Director will recognize only the statutes, regulations other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Pennsylvania of only such provisions.

VI. 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

