

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*

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of \$100 million or more in any given year on local, state, or tribal governments or private entities.

#### **List of Subjects in 30 CFR Part 943**

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 17, 1997.

#### **Brent Wahlquist,**

*Regional Director, Mid-Continent Regional Coordinating Center.*

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 943

[SPATS No. TX-035-FOR]

#### Texas 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 Texas regulatory program (hereinafter the "Texas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to Texas' regulations pertaining to definitions, prime farmland, small operator assistance, release of performance bond, and backfilling and grading. The amendment is intended to revise the Texas program to be consistent with the corresponding Federal regulations.

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

**DATES:** Written comments must be received by 4:00 p.m. c.s.t., January 28, 1998. If requested, a public hearing on the proposed amendment will be held on January 23, 1998. Requests to speak at the hearing must be received by 4:00 p.m., c.s.t. on January 13, 1998.

**ADDRESSES:** Written comments and requests to speak at the hearing should be mailed or hand delivered to Michael C. Wolfrom, Director, Tulsa Field Office, at the address listed below.

Copies of the Texas 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 Tulsa Field Office.

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining

Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa Oklahoma 74135-6547, Telephone: (918) 581-6430.

Surface Mining and Reclamation Division, Railroad Commission of Texas, 1701 North Congress Avenue, P.O. Box 12967, Austin, Texas 78711-2967, Telephone: (512) 463-6900.

**FOR FURTHER INFORMATION CONTACT:** Michael C. Wolfrom, Director, Tulsa Field Office, Telephone: (918) 581-6430.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background on the Texas Program**

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. General background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the February 27, 1980, **Federal Register** (45 FR 12998). Subsequent actions concerning the Texas program can be found at 30 CFR 943.10, 943.15, and 943.16.

##### **II. Description of the Proposed Amendment**

By letter dated December 1, 1997 (Administrative Record No. TX-644), Texas submitted a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment in response to a June 17, 1997, letter (Administrative Record No. 640) that OSM sent to Texas in accordance with 30 CFR 732.17(c). Texas proposes to amend Chapter 12 of the Texas Administrative Code (TAC).

##### *1. TAC § 12.3 Definitions.*

Texas added or revised the following definitions at § 12.3:

Previously mined area—Land affected by surface coal mining operations prior to August 3, 1977, that has not been reclaimed to the standards of this Chapter (relating to Coal Mining Regulations).

Qualified laboratory—A designated public agency, private firm, institution, or analytical laboratory that can provide the required determination of probable hydrologic consequences or statement of results of test borings or core samplings or other services as specified at §§ 12.236 and 12.240 of this title (relating to Program Services, and to Data Requirements), and that meet the standards of § 12.241 of this title (relating to Qualified Laboratories).

Thick overburden—more than sufficient spoil and other waste materials available from the entire permit area to restore the disturbed area to its approximate original contour. More than sufficient spoil and other waste materials occur where the overburden thickness times the swell factor exceeds the combined thickness of the overburden and coal bed prior to removing the coal, so that

after backfilling and grading the surface configuration of the reclaimed area would not: (1) Closely resemble the surface configuration of the land prior to mining; or (2) Blend into and complement the drainage pattern of the surrounding terrain.

Thin overburden—Insufficient spoil and other waste materials available from the entire permit area to restore the disturbed area to its approximate original contour. Insufficient spoil and other waste materials occur where the overburden thickness times the swell factor, plus the thickness of other available waste materials, is less than the combined thickness of the overburden and coal bed prior to removing the coal, so that after backfilling and grading the surface configuration of the reclaimed area would not: (1) Closely resemble the surface configuration of the land prior to mining; or (2) Blend into and complement the drainage pattern of the surrounding terrain.

## 2. TAC § 12.201 Prime Farmland

Texas proposed to add the following requirement at § 12.201(d)(5):

The aggregate total prime farmland acreage shall not be decreased from that which existed prior to mining. Water bodies, if any, to be constructed during mining and reclamation operations, must be located within the post-reclamation non-prime farmland portions of the permit area. The creation of any such water bodies must be approved by the Commission and the consent of all affected property owners within the permit area must be obtained.

## 3. TAC § 12.237 Eligibility for Assistance

At § 12.237(2), Texas proposed to amend the eligibility requirements for participation in its small operator assistance program (SOAP) by increasing the amount of the probable total actual and attributed production allowed for SOAP applicants from 100,000 to 300,000 tons. At § 12.237(2)(B) and (C), Texas increased the baseline percentage above which ownership will play a role in determining attributed coal production from 5 to 10 percent.

## 4. TAC § 12.243 Applicant Liability

Texas revised § 12.243(a) to require that a coal operator who has received assistance pursuant to §§ 12.236 and 12.240 reimburse the Commission for the cost of the services rendered. Texas revised § 12.243(a)(4) to specify that reimbursement will be required if the Commission finds that the operators actual and attributed annual production of coal for all locations exceeds 300,000 tons during the 12 months immediately following the date on which the operator is issued the surface coal mining and reclamation permit. Texas revised § 12.243(a)(5) to specify that reimbursement will be required if the permit is sold, transferred, or assigned

to another person and the transferee's total actual and attributed production exceeds the 300,000-ton production limit during the 12 months immediately following the date on which the permit was originally issued.

## 5. TAC § 12.312 Procedure for Seeking Release of Performance Bond

Texas entitled § 12.312(a) as "Bond release application" and revised it by adding the existing first sentence to § 12.312(a)(1) and adding the following new requirement:

Applications may be filed only at times or during seasons authorized by the Commission in order to properly evaluate the completed reclamation operations. The times or seasons appropriate for the evaluation of certain types of reclamation shall be established in the regulatory program or identified in the mining and reclamation plan required in Subchapter G of this Chapter and approved by the Commission.

Texas added the balance of the existing language to § 12.312(a)(2) and added a requirement that the advertisement for bond release also contain the name and address of the Commission office to which written comments, objections, or requests for public hearings and informal conference may be submitted.

Texas added the following new requirement at § 12.312(a)(3):

The permittee shall include in the application for bond release a notarized statement which certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of the act, the regulatory program, and the approved reclamation plan. Such certification shall be submitted for each application or phase of bond release.

Texas entitled § 12.312(b) as "Inspection by Commission," added the existing language to § 12.312(b)(1), and changed the language "notification and request" to "bond release application." Texas removed § 12.312(c) and added its substantive requirements to § 12.312(b)(2) with the following revised language:

Within 60 days from the filing of the bond release application, if no public hearing is held pursuant to § 12.313(c) of the title (relating to Criteria and Schedule for Release of Performance Bond, or, within 30 days after a public hearing has been held pursuant to § 12.313(c), the Commission shall notify in writing the permittee, the surety, or other persons with an interest in bond collateral who have requested notification under § 12.309(1) of this title (relating to Terms and Conditions of the Bond), and the persons who either filed objections in writing or objectors who were a party to the hearing proceedings, if any, of its decision to release or not to release all or part of the performance bond.

## 6. TAC § 12.313 Criteria and Schedule for Release of Performance Bond

Texas proposed the following revision to the existing language at § 12.313(a):

The Commission may release all or part of the bond for the entire permit area or incremental area if the Commission is satisfied that the reclamation or a phase of the reclamation covered by the bond or deposit or portion thereof has been accomplished in accordance with the following schedules for reclamation of Phases I, II, and III:

At § 12.313(a)(1), Texas added the phrase "[a]t the completion of Phase I, after" to the beginning of the provision and deleted the word "[w]hen"; added the proviso that backfilling and regarding may include the replacement of topsoil; and made other nonsubstantive language changes.

At § 12.313(a)(2), Texas added the phrase "[a]t the completion of Phase II" to the beginning of the provision; removed the provision that the Commission may release up to 25 percent of the original bond amount and added the provision that the Commission may release an additional amount of bond; changed its reference to §§ 12.330 through 12.403 of this title to § 134.092(a)(10) of the Act and Subchapter K of this Chapter relating to its requirements for suspended solids; added a reference to §§ 12.620–12.625 relating to the prime farmland survey; added a reference to Subchapter K of this Chapter relating to its requirements for retention of a permanent impoundment.

At § 12.313(a)(3), Texas added the phrase "[a]t the completion of Phase III, after" to the beginning of the provision and deleted the word "[w]hen" and changed its reference to §§ 134.091 through 134.109 of the Act of § 12.395 or § 12.560 of this title.

Texas revised § 12.313(b) by requiring that the Commission notify the permittee, the surety, and any person with an interest in collateral if the Commission disapproves the application for release of the bond.

At § 12.313(d), Texas added the option that a public hearing may be held at the State capital at its first reference to a public hearing regarding release of the bond and removed duplicative language at the end of the provision regarding holding of a public hearing.

## 7. TAC § 12.387 Backfilling and Grading—Thin Overburden

At § 12.387, Texas removed the existing requirements and added the following requirements:

Where thin overburden occurs within the permit area, the permittee, at a minimum,

shall: (1) Use all spoil and other waste materials available from the entire permit area to attain the lowest practicable grade, but not more than the angle of repose; and (2) Meet the requirements of § 12.385 of this title (relating to Backfilling and Grading: General Requirements).

#### 8. TAC § 12.388 Backfilling and Grading—Thick Overburden

At § 12.388, Texas removed the existing requirements and added the following requirements:

Where thick overburden occurs within the permit area, the permittee at a minimum shall: (1) Restore the approximate original contour and then use the remaining spoil and other waste materials to attain the lowest practicable grade, but not more than the angle of repose; (2) Meet the requirements of § 12.385 of the title (relating to Backfilling and Grading: General Requirement); and (3) Dispose of any excess spoil in accordance with §§ 12.363–12.366 of this title (relating to Disposal of Excess Spoil: General Requirements, to Disposal of Excess Spoil: Valley Fills, to Disposal of Excess Spoil: Head-of-Hollow Fills, and to Disposal of Excess Spoil: Durable Rock Fills).

#### 9. TAC § 12.620 Prime Farmland—Applicability and Special Requirements

At § 12.620(a)(1), Texas removed the existing language and added the following language:

Disposal areas containing coal mine waste resulting from underground mines that is not technologically and economically feasible to store in underground mines or on non-prime farmland. The operator shall minimize the area of prime farmland used for such purposes; or

### 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 Texas 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 Tulsa 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 4:00 p.m., c.s.t. on January

13, 1998. The location and time of the hearing will be arranged with those persons requesting the hearing. 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**. 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.

#### 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 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

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of \$100 million or more in any given year on local, state, or tribal governments or private entities.

#### List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 17, 1997.

**Brent Wahlquist,**

*Regional Director, Mid-Continent Regional Coordinating Center.*

[FR Doc. 97-33660 Filed 12-24-97; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 62**

[IL159-1b; FRL-5938-3]

**Approval and Promulgation of State Plans For Designated Facilities and Pollutants; Illinois**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve Illinois' Section 111(d)/129 State Plan submitted on June 23, 1997, for implementing and enforcing the Emissions Guidelines applicable to existing municipal waste combustors with capacity to combust more than 250 tons/day of municipal solid waste. In the final rules section of this **Federal Register**, the EPA is approving this action as a direct final rule without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse written comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse written comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse written comments (which have not already been responded to), the direct final rule will be withdrawn and the written public comments will be addressed in a subsequent final rule based on the proposed rule. Any parties interested in commenting on this document should do so at this time.

**DATES:** Written comments on this proposed rule must be received on or before January 28, 1998.

**ADDRESSES:** Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for inspection at: Regulation Development Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:**

Mark J. Palermo, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6082.

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: December 11, 1997

**Gail A. Ginsberg,**

*Acting Regional Administrator, Region V.*

[FR Doc. 97-33766 Filed 12-24-97; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 271**

[FRL-5937-1]

**Hazardous Waste Management Program: Authorization of State Hazardous Waste Management Program for Louisiana**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the Louisiana Department of Environment Quality's (LDEQ) RCRA Cluster IV hazardous waste program. The Louisiana RCRA Cluster IV hazardous waste program consists of the regulation of "Burning of Hazardous Waste in Boilers and Industrial Furnaces". In the final rules section of this **Federal Register**, the EPA is approving the State's request as a immediate final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the immediate final rule. If no adverse written comments are received in response to that immediate final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse written comments, a second **Federal Register** document will be published before the time the immediate final rule takes effect. The second document may withdraw the immediate final rule or identify the issues raised, respond to the comments and affirm that the immediate final rule will take effect as scheduled. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

**DATES:** Written comments on this proposed rule must be received on or before January 28, 1998.

**ADDRESSES:** Written comments may be mailed to Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD-G), Multimedia Planning and Permitting Division, at the address listed below. Copies of the materials submitted by LDEQ may be examined during normal business hours at the following locations: EPA Region 6 Library, 12th Floor, Wells Fargo Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202-2733, Phone number: (214) 665-6444. Louisiana Department of Environmental Quality, H.B. Garlock Building, 7290 Bluebonnet, Baton Rouge, Louisiana 70810, Phone number: (504) 765-0617.

**FOR FURTHER INFORMATION CONTACT:**

Alima Patterson (214) 665-8533.

**SUPPLEMENTARY INFORMATION:** For additional information see the immediate final rule published in the rules section of this **Federal Register**.

**Authority:** This document is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: December 11, 1997.

**Lynda F. Carroll,**

*Acting Deputy Regional Administrator, Region VI.*

[FR Doc. 97-33763 Filed 12-24-97; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 272**

[FRL-5935-6]

**Hazardous Waste Management Program: Authorization and Incorporation by Reference of State Hazardous Waste Management Program for Louisiana**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to incorporate by reference EPA's approval of the Louisiana Department of Environment Quality's (LDEQ) base hazardous waste program and to approve its revisions to that program submitted by the State of Louisiana. In the final rules section of this **Federal Register**, the EPA is approving the State's request as an immediate final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale