II. Description of the Proposed Amendment

Maryland provided an informal amendment to OSM regarding placement of excess spoil on adjacent abandoned mine lands on March 11, 1994. OSM completed its review 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, and to comply with the required amendment identified at 30 CFR 920.16(o).

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 collateral bonds, and procedures for release of general bonds, and are intended to comply with required program amendments identified at 30 CFR 920.16(k) and (m). By letter dated February 4, 1997 (Administrative Record No. MD-552-16), Maryland clarified certain provisions of the proposed amendment. Because the information in this letter only reiterated part of the proposed amendment to its previous form, it did not constitute a major revision of the original submission. Therefore, OSM did not reopen the comment period at that time.

OSM announced receipt of the proposed amendments in the January 30, 1997, Federal Register (62 FR 4502), and in the same document opened the public comment period and provided an opportunity for public hearing on the adequacy of the proposed amendment. The public period closed on March 3, 1997. OSM’s review of the proposed amendment determined that several items contained in the proposed amendments required clarification. As a result, a letter requesting clarification on four items was sent to Maryland dated June 13, 1997 (Administrative Record No. MD-576-05). Maryland responded in its letter dated June 27, 1997, (Administrative Record No. MD 576-06), by requesting a meeting with OSM and stating that additional information would not be available until after that meeting. A meeting was held on August 14, 1997, and a response was received from Maryland in its letter dated December 8, 1997 (Administrative Record No. MD-576-07). Because the clarifications provided by Maryland, OSM announced a reopening of the public comment period until February 4, 1998, in the January 20, 1998, Federal Register (63 FR 2919).

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 and paragraph notations to reflect organizational changes resulting from this amendment:

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 Maryland Department of the Environment, the regulatory authority in Maryland (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 approved 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. In its letter of clarification dated December 8, 1997 (Administrative Record No. MD-576-07), Maryland stated that as an additional safeguard to prevent any default by the operator on a contract or failure to perform reclamation could be funded by specially earmarking a portion of Maryland’s AML grant funds to complete the reclamation.

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, when completed, shall be compatible with the natural surroundings and be suitable for the...
requirements are necessary to ensure
AML site and will determine which
process would verify conditions at the
07), Maryland further stated that a field
call to issue a cessation order to stop the work on the area until the
failure has been corrected.
In telephone conversations with OSM representatives, a Maryland regulatory program official stated that the operator
would be required to submit a
reclamation plan for each abandoned
site proposed to be used for excess spoil
placement. Each site will have a
reclamation plan. Additionally, for
existing permits where an operator
decided to use an abandoned site for
excess spoil disposal, the operator must
apply for and receive approval of a
permit revision. This permit revision
process includes public participation. In
its December 8, 1997, letter
(Administrative Record No. MD±576±07), Maryland stated that environmental
reviews and public participation for
these sites will be handled through the
State's Title V surface mining regulatory
program.
Placement of excess spoil on adjacent
abandoned mine land has been
addressed previously in other
rulesmaking. Specifically, in his July 9,
1991, letter to Ohio (Administrative
Record No. MD±576±09) the Director of
OSM clarified OSM's position
concerning the standards and
requirements which apply to the usage
of excess spoil for reclamation of
abandoned mine land sites. SM focused
on the parameters for excess spoil
disposal outside the permit area as
established, in part, in several final
rules approving such a provision in the
In the January 21, 1981, Federal
Register announcing approval of the
West Virginia program (46 FR 5919), the
Secretary found that, for purposes of
excess spoil disposal, a reclamation
contract governing work to be
performed on a Federal AML
reclamation grant project is the
equivalent of permit and bond under
Title V of SMCRA. In the May 23, 1990,
Federal Register (55 FR 21329), OSM
found that disposal of excess spoil on a
Federally funded AML reclamation
project is approved provided the spoil
is not necessary to restore approximate
original contour (AOC) on or otherwise
reclaim the active mine. In addition, as
stated in the May 23, 1990, Federal
Register, fills are not to be created on
AML reclamation projects. Spoil
deposited on such sites may be used
only to complete reclamation and to
return the site to its AOC. OSM
restricted eligibility for such spoil
deposition to AML reclamation projects
funded through the Federal AML grant
process. The May 23, 1990, finding,
however, did not prohibit the possibility
that "no-cost reclamation" contracts,
which allow spoil disposal on AML
sites not included in Federally funded
grants, could be approved in the future.
In order to gain OSM approval,
however, "no-cost reclamation"
amendments would have to contain
meaningful performance incentives or
safeguards to ensure that spoil is placed
only where it is needed to restore AOC
and where it will not destroy or degrade
features of environmental value. In
addition, the amendments must require
that spoil be placed in an
environmentally and technically sound
fashion. See OSM Director's July 9,
1991, letter to Ohio (Administrative
Record No. MD±576±09). In short, "no
cost reclamation" amendments must
provide a degree of security comparable
to that afforded by a Federally funded
AML reclamation project. The Director
finds that Maryland's proposed
regulations, at COMAR 26.20.26.05,
meet these requirements, for the reasons
set forth below.
First, Maryland's proposed
regulations require that the amount of
excess spoil placed on an abandoned
site will not exceed that required to
restore that site to AOC. Moreover,
valley, head of hollow and durable rock
fills may not be constructed on
abandoned, unpermitted sites. (COMAR
26.20.26.05 B(1), (3)).
Second, the proposed regulations
require that the plan for excess spoil
placement meet the design requirements
of Maryland's approved program, and
that the actual placement of excess spoil
be implemented in accordance with the
approved program. (COMAR A
26.20.26.05 A(3), B(4)). The approved
Maryland regulatory program already
contains backfilling requirements for
permited and bonded areas which
ensure that spoil is placed in an
environmentally sound fashion, and
that such placement will not destroy or
degrade features of environmental
value. See, for example, COMAR
26.20.28 (backfilling).
Third, and finally, the Director finds
that the proposal contains sufficient
performance incentives in order to require
compliance with all applicable
requirements, since the permittee risks
issuance of a cessation order if it defaults on the contract for excess spoil placement. Because this cessation order would stop all mining on the active permit, and could, presumably, lead to permit revocation and bond forfeiture if the abandoned mine land area is not subsequently permitted, bonded and reclaimed adequately, the operator should have ample incentive to comply with the contract.

Essentially, Maryland will apply its Title V regulatory program performance standards, public participation and enforcement provisions to these abandoned, excess spoil disposal sites, even though the sites will not be permitted or bonded. In addition, Maryland has provided performance incentives to ensure compliance with these Title V requirements, and, finally, has indicated that Abandoned Mine Land grant funds will be available to reclaim these sites in the event that the operator defaults on the terms of its contract. Based upon all of the above considerations, the Director is approving COMAR 26.20.26.05 to the extent that Maryland requires the placement of excess spoil on abandoned sites comply with the provisions of its approved regulatory program pertaining to spoil placement, including the requirements pertaining to backfilling. The Director also finds that the required amendment at 30 CFR 920.16(o) has been satisfied and it is, therefore, removed.

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 in writing and upon the books of the bank issuing these certificates. 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 maximum acceptable amount of an individual certificate of deposit from $40,000 to $100,000.

c. New subparagraph (B) is added to require that the bank give prompt notice to the Bureau and the permittee of any notice received or action filed alleging the 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.

The Director finds that the proposed changes in 2.a., b., and c. are substantially identical to the Federal regulations at 30 CFR 800.21(a)(3) and (a)(4), and 30 CFR 800.16(e)(1), respectively. The Director also finds that the required amendment at 30 CFR 920.16(k) has been satisfied and it is, therefore, removed.


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. Subparagraphs (B)(2)(c) and (d) are revised by substituting 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 appropriate dates of the work performed be summarized.

The Director finds that the proposed changes in 3.a., b., and c. are substantively identical to the Federal regulations at 30 CFR 800.40(a)(2). The Director also finds that the required amendment at 30 CFR 920.16(m) has been satisfied and it is, therefore, removed.

IV. Summary and Disposition of Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No 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 Maryland program. The Mine Safety and Health Administration responded that no action was anticipated on the amendment. No other comments were received.

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.). The Director has determined that this amendment contains no such provisions and that EPA concurrence is therefore unnecessary. Also, EPA did not respond to OSM’s request for comments.

V. Director’s Decision

Based on the above finding(s), the Director approves the proposed amendments as submitted by Maryland and on March 13, 1997, revised as of February 4, 1997, and clarified on December 8, 1997. In particular, the Director is approving COMAR 26.20.26.05 to the extent that Maryland requires that the placement of excess spoil on abandoned sites comply with the provisions of its approved regulatory program pertaining to spoil placement, including the requirements pertaining to backfilling. The Director is approving the proposed regulations with the understanding that they be promulgated in a form identical to that submitted to OSM including the clarifications. Any references between these regulations and the State’s final regulations will be processed as a separate amendment subject to public review at a later date. The Director is also removing the required amendments at 30 CFR 920.16(k), (m), and (o) because the Maryland program will now include those requirements at paragraph B(8) of COMAR 26.20.14.06, paragraph B(2) of COMAR 26.20.14.90, and COMAR 26.20.26.05, respectively. The required amendments were initially included in the December 5, 1991, Federal Register (56 FR 63660), and in the December 30, 1992, Federal Register (57 FR 62220).

The Federal regulations at 30 CFR Part 920, codifying decisions concerning the Maryland program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendments 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.

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 in the actual language of State regulatory programs and program amendments since each such
Material (VOM) emissions from
revision request to the EPA regarding
State Implementation Plan (SIP)
1995, the State of Illinois submitted a

SUMMARY:

ACTION:

Agency (EPA).

AGENCY:
Implementation Plan; Illinois
Approval and Promulgation of
[IL167±1a; FRL±5978±8]
40 CFR Part 52
AGENCY
ENVIRONMENTAL PROTECTION
AGENCY
40 CFR Part 52
[IL167±1a; FRL±5978±8]
Approval and Promulgation of
Implementation Plan; Illinois
AGENCY: Environmental Protection
Agency (EPA).
ACTION: Direct final rule.

SUMMARY: On May 5, 1995, and May 26,
1995, the State of Illinois submitted a
State Implementation Plan (SIP)
revision request to the EPA regarding
rules for controlling Volatile Organic
Material (VOM) emissions from
Synthetic Organic Chemical
Manufacturing Industry (SOCMI) reactor
processes and distillation operations in
the Chicago and Metro East (East St.
Louis) areas. VOM, as defined by the
State of Illinois, is identical to "Volatile
Organic Compounds" (VOC), as defined
by EPA. VOC is an air pollutant which
combines with nitrogen oxides in the
atmosphere to form ground-level ozone,
commonly known as smog. Ozone
pollution is of particular concern
because of its harmful effects upon lung
tissue and breathing passages. This plan
was submitted to meet the Clean Air Act
(Acrt) requirement for States to adopt
Reasonably Available Control
Technology (RACT) rules for sources
that are covered by Control Techniques
Guideline (CTG) documents. This
rulemaking action is promulgated by OSM
with the approval of EPA.

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: March 10, 1998.

Allen D. Klein,
Regional Director, Appalachian Regional
Coordinating Center.

For the reasons set out in the
preamble, Title 30, Chapter VII,
Subchapter T of the Code of Federal
Regulations is amended as set forth
below:

PART 920—MARYLAND

1. The authority citation for part 920
continues to read as follows:

Authority: 30 U.S.C. 1201 et seq.

2. Section 920.15 is amended in the
table by adding a new entry in
chronological order by "Date of Final
Publication" to read as follows:

§ 920.15 Approval of Maryland regulatory
program amendments.

<table>
<thead>
<tr>
<th>Original amendment submission date</th>
<th>Date of final publication</th>
<th>Citation/description</th>
</tr>
</thead>
</table>

§ 920.16 [Amended]

3. Section 920.16 is amended by
removing and reserving paragraphs (k),
(m) and (o).

[FR Doc. 98–7415 Filed 3–20–98; 8:45 am]
BILLING CODE 4310–05–M