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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 943

[SPATS No. TX-039-FOR]

#### Texas Abandoned Mine Land Reclamation Plan

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

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** OSM is approving an amendment to the Texas abandoned mine land reclamation plan (from now on referred to as the "Texas plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Texas proposed additions, deletions, and revisions to its plan pertaining to Responsibilities; Definitions; Abandoned mine land reclamation fund; Eligible coal lands and water; Reclamation objectives and priorities; Reclamation project evaluations; Utilities and other facilities; Limited liability; Entry for studies or exploration; Contractor responsibility; Eligible noncoal lands and water; Reclamation priorities for noncoal program; Exclusion of certain noncoal reclamation sites; Land acquisition authority—noncoal; Lien requirements; Written consent for entry; Operations on private land; Entry and consent to reclaim; Appraisals; Liens; Satisfaction of liens; Entry for emergency reclamation; Land eligible for acquisition; Procedures for acquisition; Acceptance of gifts of land; Management of acquired land; and Disposition of reclaimed lands. Texas intended to revise its plan to be consistent with the corresponding Federal regulations.

**EFFECTIVE DATE:** November 25, 1998.

**FOR FURTHER INFORMATION CONTACT:** Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135-6547, Telephone: (918) 581-6430, E-mail: mwolfrom@mcrgrw.osmre.gov.

#### **SUPPLEMENTARY INFORMATION:**

I. Background on the Texas Plan

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 Texas Plan**

On June 23, 1980, the Secretary of the Interior approved the Texas plan. You can find background information on the Texas plan, including the Secretary's findings, the disposition of comments, and the approval of the plan in the June 23, 1980, **Federal Register** (45 FR 41937). You can also find later actions concerning the Texas plan and amendments at 30 CFR 943.25.

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

By letter dated December 1, 1997 (Administrative Record No. TAML-61), Texas submitted a proposed amendment to its plan under the provisions of SMCRA. Texas submitted the amendment at its own initiative. We announced receipt of the amendment in the December 29, 1997, **Federal Register** (62 FR 67592). In the same document, we opened the public comment period and provided an opportunity for a public hearing on the adequacy of the amendment. The public comment period closed on January 28, 1998.

During our review of the amendment, we identified concerns relating to the following sections: Eligible coal lands and water; Reclamation priorities for noncoal program; Land acquisition authority-noncoal; Lien requirements; Satisfaction of liens; Entry and consent to reclaim; Appraisals; Entry for emergency reclamation; Land eligible for acquisition; Disposition of reclaimed lands; Liens. We also identified editorial corrections in the two sections, Responsibilities and Definitions. We notified Texas of the concerns by facsimiles dated March 9, and August 25, 1998 (Administrative Record Nos. TAML-61.08 and TAML-61.10, respectively). Texas responded in letters dated July 20, and September 3, 1998, by submitting additional explanatory information and a revised amendment (Administrative Record Nos. TAML-61.09 and TAML-61.12, respectively).

Texas proposed additional revisions to the following sections: 12.803 Eligible coal lands and water; 12.809 Reclamation priorities for noncoal program; 12.811 Land acquisition authority-noncoal; 12.812 Lien requirements; 12.814 Entry and consent to reclaim; 12.815 Appraisals; 12.816

Liens; 12.817 Satisfaction of liens; 12.818 Entry for emergency reclamation; 12.819 Land eligible for acquisition; 12.820 Procedures for acquisition; 12.821 Acceptance of gifts of lands; 12.822 Management of acquired land; and 12.823 Disposition of reclaimed lands.

Based upon the additional explanatory information and revisions to the proposed plan amendment submitted by Texas, we reopened the public comment period in the October 2, 1998, **Federal Register** (63 FR 53003). The public comment period closed on October 19, 1998.

#### **III. Director's Findings**

Set forth below, under the provisions of SMCRA and the Federal regulations at 30 CFR 884.14 and 884.15, are our 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. Sections That Texas Deleted From Its Regulations*

###### 1. Section 12.805, Reclamation Project Evaluation

Texas proposed to delete this section. We are approving this deletion because we have no counterpart Federal regulation and the deletion will not make the Texas regulations inconsistent with the Federal regulations.

###### 2. Section 12.814, Operations on Private Lands

Texas proposed to delete this section. We are approving this deletion because the provisions in this section are contained in new Sections 12.814, Entry and Consent to Reclaim and 12.815, Entry for Emergency Reclamation. Also, the deletion will not make the Texas regulations inconsistent with the Federal regulations.

##### *B. Revisions to Texas' Plan That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations*

The proposed State regulations listed in the table contain language that is the same as or similar to the corresponding sections of the Federal regulations. Differences between the proposed State provisions and the Federal provisions are nonsubstantive.

| Topic  | State regulation     | Federal counterpart regulation |
|--|----------------------|--------------------------------|
| Definitions for abandoned mine reclamation fund or fund, eligible lands and water, emergency, extreme danger, left or abandoned in either an unreclaimed or inadequately reclaimed condition, mineral owner, OSM, permanent facility, project, reclamation activity, State reclamation program, Texas abandoned mine reclamation fund or State fund. | Section 12.801 ..... | 30 CFR 870.5.                  |
| Texas Abandoned Mine Reclamation Fund .....  | Section 12.802 ..... | 30 CFR 872.12.                 |
| Eligible Coal Lands and Water .....  | Section 12.803 ..... | 30 CFR 874.12.                 |
| Reclamation Objectives and Priorities .....  | Section 12.804 ..... | 30 CFR 874.13.                 |
| Utilities and other Facilities .....   | Section 12.805 ..... | 30 CFR 874.14 (b) and (d).     |
| Limited Liability .....  | Section 12.806 ..... | 30 CFR 874.15.                 |
| Contractor Responsibility .....  | Section 12.807 ..... | 30 CFR 874.16 and 875.20.      |
| Eligible Noncoal Lands and Water .....   | Section 12.808 ..... | 30 CFR 875.14.                 |
| Reclamation Priorities for Noncoal Program .....   | Section 12.809 ..... | 30 CFR 875.15.                 |
| Exclusion of Certain Noncoal Reclamation Sites .....   | Section 12.810 ..... | 30 CFR 875.16.                 |
| Land Acquisition Authority—Noncoal .....   | Section 12.811 ..... | 30 CFR 875.17.                 |
| Lien Requirements .....  | Section 12.812 ..... | 30 CFR 875.18.                 |
| Written Consent for Entry .....  | Section 12.813 ..... | 30 CFR 877.11                  |
| Procedures for Acquisition .....   | Section 12.820 ..... | 30 CFR 879.12.                 |
| Management of Acquired Land .....  | Section 12.822 ..... | 30 CFR 879.14.                 |

Because the above proposed revisions are identical in meaning to the corresponding Federal regulations, we find that Texas' revised plan is in compliance with the Federal regulations.

*C. Revisions to Texas' Plan That Are Not Substantively Identical to the Corresponding Provisions of the Federal Regulations*

1. Section 12.814, Entry and Consent to Reclaim

Texas proposed to repeal section 12.814, Operations on Private lands, and adopt new section 12.814, Entry and Consent to Reclaim. This new section authorizes the Commission to enter land to perform reclamation activities or conduct studies or exploratory work to determine the existence of the adverse effects of past coal mining with or without the landowner's permission. The Commission must give a minimum of 30 days written notice to the landowner before entering property where the landowner's permission to enter has not been obtained or where the landowner is not known or is readily available. If the landowner is known, the Commission will send the written notice by mail, return receipt requested, along with a copy of the written findings required under paragraph (c)(1) of this section. If the landowner is not known, or if the current mailing address of the landowner is not known, the Commission will post a notice in one or more places on the property to be entered where it is readily visible to the public. The Commission will also advertise once in a newspaper of general circulation in the locality in which the land is located. The advertisement must include a statement of where the

findings required under paragraph (c)(1) of this section may be inspected or obtained.

We are approving this revision because it is consistent with the counterpart Federal regulations at 30 CFR 877.13.

2. 12.816, Liens

In paragraph (a)(2), Texas proposed to add a provision that allows it to notify landowners of the amount of the proposed lien and to give the landowners a reasonable amount of time to pay the lien before the lien is placed against the property.

Also, in paragraph (d), Texas proposed to conduct hearings and any appeals by landowners concerning the amounts of the liens under Chapter 2001, Government Code.

The State removed language that required it to place a lien against reclaimed land if the reclamation results in an increase in the fair market value with one exception. This exception is that the State may waive the lien if the cost of filing it exceeds the increase in fair market value as a result of the reclamation activities. The State proposed to allow itself the discretion to place a lien against the reclaimed land and to also retain the exception for waiving liens.

We are approving these revisions because they are in compliance with the counterpart Federal regulations at 30 CFR 882.13.

3. 12.818, Entry for Emergency Reclamation

Texas proposed to adopt this new section to conform with the Texas Natural Resources Code, Section 134.152 (b) and (c). This new section allows the Commission to enter land where an emergency exists and other

land necessary to have access to that land. It also allows the Commission to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices, and to do whatever is necessary and suitable to protect the public health, safety, or general welfare.

We are approving this new section because it is consistent with the counterpart Federal regulations at 30 CFR 877.14(a). However, because Texas has not formally assumed responsibility for its abandoned mine land emergency program, we are under no obligation to reimburse it for expenses it acquires in handling any emergencies under this section.

4. Section 12.819, Land Eligible for Acquisition

This section sets forth the criteria that any land must meet before the State can purchase the land with abandoned mine land reclamation funds. We are approving this section because it is in compliance with the Federal regulations at 30 CFR 879.11.

5. Section 12.821, Acceptance of Gifts of Land

Texas proposed to renumber this section from Section 12.812 to 12.821. Texas revised paragraphs (a) and (c) to read as follows:

(a) The Commission under an approved reclamation plan may accept donations of title to land or interests in land if the land proposed for donation meets the requirements set out in § 12.819 of this title (relating to Land Eligible for Acquisition).

(c) If the offer is accepted, a deed of conveyance shall be executed, acknowledged and recorded. The deed shall state that it is made "as a gift under the Texas Surface Coal Mining and Reclamation Act." Title to donated land shall be in the name of the state of Texas.

We are approving these revisions because they are consistent with the Federal regulations at 30 CFR 879.13.

6. Section 12.823, Disposition of Reclaimed Land

Texas proposed to renumber this section from Section 12.813 to 12.823, and to reformat this section. This section sets forth the criteria under which the State may dispose of land acquired under Section 12.819, Land Eligible for Acquisition. We are approving this revision because it is in compliance with the Federal regulations at 30 CFR 879.15.

*D. Revisions to Texas' Plan That Do Not Have Corresponding Provisions in the Federal Regulations*

Texas proposed section 12.800 Responsibilities as an addition to its regulations. This section sets forth the responsibilities that the Commission will have regarding the Texas Abandoned Mine Land Reclamation Program. We previously approved this section in the April 22, 1998, **Federal Register** notice (63 FR 19821).

**IV. Summary and Disposition of Comments**

*Public Comments*

We asked the public for comments and provided an opportunity for a public hearing on the proposed amendment. We did not receive any public comments, and because no one requested an opportunity to speak at a public hearing, we did not hold one.

*Federal Agency Comments*

Under the provisions of 30 CFR 884.14(a)(2) and 884.15(a), we requested comments on the proposed amendment from various other Federal agencies with an actual or potential interest in the Texas plan. We received comments from the U.S. Army Corps of Engineers in letters dated January 27, and October 5, 1998 (Administrative Record Nos. TAML-61.06 and TAML-61.16, respectively). The letters stated that the changes Texas proposed in its amendment were satisfactory.

**V. Director's Decision**

Based on the above findings, we approve the proposed plan amendment as submitted by Texas on December 1, 1997, and as revised on September 3, 1998. We approve the regulations as

proposed by Texas with the provision that Texas fully issue, in identical form, the regulations they submitted and we and the public reviewed.

We are amending the Federal regulations at 30 CFR Part 943, that codify decisions concerning the Texas plan. We are also making this final rule effective immediately to expedite the State plan amendment process and to encourage States to bring their plans into conformity with the Federal standards without undue delay. SMCRA requires consistency of State and Federal standards.

**VI. Procedural Determinations**

*Executive Order 12866*

This proposed 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 and Tribal abandoned mine land reclamation plans and revisions since each plan is drafted and issued by a specific State or Tribe, not by OSM. Decisions on proposed abandoned mine land reclamation plans and revisions submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231-1243) and 30 CFR Part 884.

*National Environmental Policy Act*

This rule does not require an environmental impact statement since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

*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 submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that the regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously issued by OSM will be implemented. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

*Unfunded Mandates*

OSM has determined and certifies under the provisions of 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: November 6, 1998.

**Brent Wahlquist,**

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

For the reasons set out in the preamble, 30 CFR Part 943 is amended as set forth below:

**PART 943—TEXAS**

1. The authority citation for Part 943 continues to read as follows:

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

2. Section 943.25 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

**§ 943.25 Approval of Texas abandoned mine land reclamation plan amendments.**

\* \* \* \* \*

| Original amendment submission date | Date of final publication | Citation/description                                   |
|------------------------------------|---------------------------|--|
| December 1, 1997                   | November 25, 1998         | 12.800 through .814; .815(d); .816; .818 through .823. |

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[OPP-300752; FRL-6040-9]  
RIN 2070-AB78

### Hydramethylon; Extension of Tolerance for Emergency Exemptions

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

**ACTION:** Final rule.

**SUMMARY:** This rule extends a time-limited tolerance for residues of the insecticide hydramethylon in or on pineapples at 0.05 part per million (ppm) for an additional one and one-half-year period, to May 30, 2001. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on pineapples. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

**DATES:** This regulation becomes effective November 25, 1998. Objections and requests for hearings must be received by EPA, on or before January 25, 1999.

**ADDRESSES:** Written objections and hearing requests, identified by the docket control number, [OPP-300752], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP-300752], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2,

1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Follow the instructions in Unit II. of this preamble. No Confidential Business Information (CBI) should be submitted through e-mail.

**FOR FURTHER INFORMATION CONTACT:** By mail: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 272, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-9364; e-mail:

pemberton.libby@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** EPA issued a final rule, published in the **Federal Register** of March 4, 1998 (63 FR 10537-10543) (FRL-5767-1), which announced that on its own initiative under section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), it established a time-limited tolerance for the residues of hydramethylon in or on pineapples at 0.05 ppm, with an expiration date of January 31, 1999. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of hydramethylon on pineapples for this year growing season due to continued need to control big-headed and Argentine ants. After having reviewed the submission, EPA concurs that emergency conditions exist for this state. EPA has authorized under FIFRA section 18 the use of hydramethylon on pineapples for control of big-headed and Argentine ants in pineapples.

EPA assessed the potential risks presented by residues of hydramethylon in or on pineapples. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule

of March 4, 1998 (63 FR 10537). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional one and one-half-year period. Although this tolerance will expire and is revoked on May 30, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on pineapples after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

### I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by January 25, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: