

(v) The interim contract contains the same terms and conditions as the previous contract, with the exception of its effective and termination dates, provisions governed by paragraphs (b)(2)(i), (b)(2)(iv), and (b)(2)(vi) of this section, and any other differences in terms and conditions that the board of directors, including a majority of the directors who are not interested persons of the fund, finds to be immaterial; and

(vi) The interim contract contains the following provisions:

(A) The compensation earned under the contract will be held in an interest-bearing escrow account with the fund's custodian or a bank;

(B) If a majority of the fund's outstanding voting securities approve a contract with the investment adviser by the end of the 150-day period, the amount in the escrow account (including interest earned) will be paid to the investment adviser; and

(C) If a majority of the fund's outstanding voting securities do not approve a contract with the investment adviser, the investment adviser will be paid, out of the escrow account, the lesser of:

(1) Any costs incurred in performing the interim contract (plus interest earned on that amount while in escrow); or

(2) The total amount in the escrow account (plus interest earned).

Dated: November 29, 1999.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 99-31333 Filed 12-3-99; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

[SPATS No. IL-097-FOR, Part I]

Illinois Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving part of an amendment to the Illinois regulatory program (Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Illinois proposed revisions to its program concerning subsidence control, water replacement, performance

bonds, siltation structures, impoundments, hydrologic balance, disposal of noncoal mine wastes, revegetation, backfilling and grading, prime farmland, and State inspections. This final rule document addresses Illinois' revisions concerning subsidence control and water replacement. The primary focus of these revisions is to address changes required by the Energy Policy Act of 1992 regarding repair or compensation for material damage caused by subsidence from underground coal mining operations and replacement of drinking, domestic, and residential water supplies that have been adversely impacted by underground coal mining operations. Illinois intends to revise its program to be consistent with the corresponding Federal regulations, to provide additional safeguards, and to improve operational efficiency.

EFFECTIVE DATE: December 6, 1999.

FOR FURTHER INFORMATION CONTACT:

Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204-1521. Telephone: (317) 226-6700. Internet: INFOMAIL@indgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Illinois 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 Illinois Program

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. You can find background information on the Illinois program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the June 1, 1982, **Federal Register** (47 FR 23883). You can find later actions concerning the Illinois program at 30 CFR 913.15, 913.16, and 913.17.

II. Submission of the Proposed Amendment

By letter dated August 2, 1999 (Administrative Record No. IL-5044), the Illinois Department of Natural Resources (Department) sent us an amendment to the Illinois program under SMCRA. The Department proposed to amend Title 62 of the Illinois Administrative Code (IAC) in response to our letters dated May 20, 1996, June 17, 1997, and January 15, 1999 (Administrative Record Nos. IL-1900, IL-2000, and IL-5036, respectively), that we sent to Illinois

under 30 CFR 732.17(c). The amendment also includes changes made at the Department's own initiative.

We announced receipt of the amendment in the August 17, 1999, **Federal Register** (64 FR 44674). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period closed on September 16, 1999. Because no one requested a public hearing or meeting, we did not hold one.

During our review of the amendment, we identified concerns relating to siltation structures, impoundments, performance bonds, and State inspections. We also identified some nonsubstantive editorial errors. We notified Illinois of these concerns and editorial problems by letter dated September 21, 1999 (Administrative Record No. IL-5048). Because we did not identify any concerns relating to Illinois' revisions for subsidence control and water replacement, we are separating Illinois' amendment into two parts. Part I concerns revisions to Illinois' regulations relating to subsidence control and water replacement. Part II concerns revisions to Illinois' regulations relating to performance bonds, siltation structures, impoundments, hydrologic balance, disposal of noncoal mine wastes, revegetation, backfilling and grading, prime farmland, and State inspections. This final rule **Federal Register** document addresses IL-097-FOR, Part I.

III. Director's Findings

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings on Illinois' revisions pertaining to subsidence control and water replacement.

On March 31, 1995, OSM promulgated rules to implement new section 720(a) of SMCRA. Section 720(a), which took effect on October 24, 1992, as part of the Energy Policy Act of 1992, Public Law 102-486, 206 Stat. 2776, requires all underground coal mining operations conducted after October 24, 1992, to promptly repair or compensate for material damage caused by subsidence to noncommercial buildings and occupied residential dwellings and related structures. It also requires the replacement of drinking, domestic, and residential water supplies that have been adversely impacted by underground coal mining operations conducted after that date. By letter dated May 20, 1996, under 30 CFR 732.17(c), we notified Illinois to amend its program to be no less effective than

the changes which resulted from the enactment of section 720(a) of SMCRA and the promulgation of implementing Federal regulations on March 31, 1995 (Administrative Record No. IL-1900). On April 27, 1999, the U.S. Court of Appeals for the District of Columbia Circuit vacated two of the March 31, 1995, implementing regulations (*National Mining Ass'n v. Babbitt*, 98-

5320, D.C. Cir. 1999). Illinois' August 2, 1999, amendment reflected the U.S. Court of Appeals' decision.

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

1. The State regulations listed in the table below contain language that is the

same as or similar to the corresponding sections of the Federal regulations. Differences between the State regulations and the Federal regulations are minor.

Topic	State regulation	Federal regulation
Definition of "Drinking, domestic or residential water supply".	62 IAC 1701. Appendix A	30 CFR 701.5.
Definition of "Material damage"	62 IAC 1701. Appendix A	30 CFR 701.5.
Definition of "Replacement of Water Supply" ..	62 IAC 1701. Appendix A	30 CFR 701.5.
Subsidence Control Plan	62 IAC 1784.20(a), Introductory paragraph	30 CFR 784.20(a), Introductory paragraph.
Subsidence Control Plan	62 IAC 1784.20(a)(1)	30 CFR 784.20(a)(1).
Subsidence Control Plan	62 IAC 1784.20(a)(2)	30 CFR 784.20(a)(2).
Subsidence Control Plan	62 IAC 1784.20(b), Introductory paragraph	30 CFR 784.20(b), Introductory paragraph.
Subsidence Control Plan	62 IAC 1784.20(b)(1)	30 CFR 784.20(b)(1).
Subsidence Control Plan	62 IAC 1784.20(b)(2)	30 CFR 784.20(b)(2).
Subsidence Control Plan	62 IAC 1784.20(b)(4)	30 CFR 784.20(b)(4).
Subsidence Control Plan	62 IAC 1784.20(b)(6)	30 CFR 784.20(b)(6).
Subsidence Control Plan	62 IAC 1784.20(b)(8)(A)	30 CFR 784.20(b)(7).
Subsidence Control Plan	62 IAC 1784.20(b)(10)	30 CFR 784.20(b)(9).
Subsidence Control	62 IAC 1817.121(a)(1)	30 CFR 817.121(a)(1).
Subsidence Control	62 IAC 1817.121(a)(3)	30 CFR 817.121(a)(2).
Subsidence Control	62 IAC 1817.121(a)(4)	30 CFR 817.121(a)(3).
Subsidence Control	62 IAC 1817.121(c)(1)	30 CFR 817.121(c)(1).

Because the above State regulations have the same meaning as the corresponding Federal regulations, we find that they are no less effective than the Federal regulations.

2. Illinois made minor wording changes, including changing the term "operator" to the term "permittee," throughout this amendment. Illinois also revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment. We find that these changes are nonsubstantive and will not make Illinois' regulations less effective than the Federal regulations.

B. Revisions to Illinois' Regulations That Relate to Replacement of Water Supplies

1. *62 IAC 1784.14(b)(1) Ground Water Information.* In the March 31, 1995, **Federal Register** (62 FR 16728-29 and 16732-33), we discussed the role that the counterpart Federal regulation at 30 CFR 784.14(b)(1) plays in obtaining baseline hydrologic information. This information is needed to make the finding for the probable hydrologic consequence determinations at 30 CFR 784.14(e) and to implement the performance standard for replacement of water supplies at 30 CFR 817.41(j). The Federal regulation requires that the application include the following information for the permit and adjacent areas: (1) the location and ownership of

existing wells, springs, and other ground-water resources, (2) seasonal quality and quantity of ground water, and (3) ground water usage. By letter dated April 1, 1999 (Administrative Record No. IL-5042), we notified Illinois that its regulation at 62 IAC 1784.14(b)(1) did not require baseline hydrologic information for ground water overlaying or adjacent to underground workings. Although Illinois' regulation was worded the same as the counterpart Federal regulation at 30 CFR 784.14(b)(1), it did not mean the same because the Illinois definitions of "permit area" and "adjacent area" do not include the shadow area. "Shadow area" is the term used by Illinois to differentiate the surface over underground workings areas from the surface permitted and bonded areas. Therefore, Illinois' regulation would not require baseline hydrologic information for ground water overlaying or adjacent to underground workings.

In response to our letter, Illinois proposed several revisions to 62 IAC 1784.14(b)(1). Illinois revised subsection (b)(1) by adding the word "shadow." This subsection now requires the permit application to contain the location and ownership of existing wells, springs, and other ground water resources; seasonal quality and quantity of ground water; and ground water usage for the permit, shadow, and adjacent areas. Illinois revised subsection (b)(1)(A) by

redesignating it as subsection (b)(1)(A)(i) and by adding the phrase "for the permit area and its adjacent area." The revised subsection requires that ground water quality descriptions include, at a minimum, for the permit area and its adjacent area: pH, total dissolved solids, hardness, alkalinity, acidity, sulfates, total iron, total manganese, and chlorides. Illinois added new subsection (b)(1)(A)(ii) to require that ground water quality descriptions include, at a minimum, for the shadow area and its adjacent area: pH, total dissolved solids, total iron and total manganese. For the permit, shadow, and adjacent areas, the Department allows the measurement of specific conductance in lieu of total dissolved solids if the permittee develops site specific relationships precisely correlating specific conductance to total dissolved solids for specific sites for all zones being monitored. Illinois revised subsection (b)(1)(B) by adding the phrase "for the permit, shadow, and adjacent areas." The revised subsection requires ground water quantity descriptions for the permit, shadow, and adjacent areas to include, at a minimum, rates of discharge or usage and elevation of the potentiometric surface in the coal to be mined. It also requires this information for each water bearing stratum above the coal to be mined and in each water bearing stratum which may be

potentially impacted below the coal to be mined.

Illinois' revised regulation contains the same or similar requirements for the permit, shadow, and adjacent areas as the counterpart Federal regulation at 30 CFR 784.14(b)(1). Therefore, we find that Illinois' regulation at 62 IAC 1784.14(b)(1) is no less effective than the Federal regulation.

2. Illinois proposed the following revisions to its regulations at 62 IAC 1784.14 and 1817.41:

a. *62 IAC 1784.14(e) Probable hydrologic consequences determination.* Illinois added a new regulation provision at 62 IAC 1784.14(e)(3)(D) to require that the determination of the probable hydrologic consequences include the following finding:

Whether the underground mining activities conducted after January 19, 1996 may result in contamination, diminution or interruption of a well or spring in existence at the time the permit application is submitted and used for domestic, drinking, or residential purposes within the permit, shadow or adjacent areas.

With one exception, Illinois' proposed regulation is substantively identical to the counterpart Federal regulation at 30 CFR 784.14(e)(3)(iv). Illinois requires the finding to be made for underground mining activities conducted after January 19, 1996, while the Federal regulation requires the finding to be made for underground mining activities conducted after October 24, 1992.

b. *62 IAC 1817.41(j) Drinking, domestic or residential water supply.* Illinois replaced its currently approved provision for replacement of water supplies at 62 IAC 1817.121(c)(3) with the following new provision at 62 IAC 1817.41(j):

Drinking, domestic or residential water supply. The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after January 19, 1996, if the affected well or spring was in existence before the date the Department received the permit application for the activities causing the loss, contamination or interruption. The baseline hydrologic information required in 62 Ill. Adm. Code 1780.21 and 1784.14 and the geologic information concerning baseline hydrologic conditions required in 62 Ill. Adm. Code 1780.22 and 1784.22 will be used to determine the impact of mining activities upon the water supply.

With one exception, Illinois' proposed regulation is identical to the counterpart Federal regulation at 30 CFR 817.41(j). Illinois requires the replacement of protected water supplies that are contaminated, diminished, or interrupted by underground mining activities conducted after January 19,

1996, while the Federal regulation requires the replacement of protected water supplies that are contaminated, diminished, or interrupted by underground mining activities conducted after October 24, 1992.

Illinois did not use the October 24, 1992, effective date for either of its regulations because its approved program did not require replacement of water supplies impacted by underground mining activities until January 19, 1996. The Illinois Surface Coal Mining Land Conservation and Reclamation Act prohibits retroactively applying regulations. The requirement to replace water supplies was effective upon passage of the Energy Policy Act of 1992. Permittees in both primacy States and Federal program States, as well as on Indian lands, were required to comply with this provision for their operations conducted after October 24, 1992. OSM and most State regulatory authorities ensured that complaints alleging violations of the nature covered under section 720(a) of SMCRA were documented and a record maintained until Federal regulations to enforce the Energy Policy Act were promulgated. The Federal regulations were promulgated effective May 1, 1995 (60 FR 16722, March 31, 1995). In the March 31, 1995, preamble for 30 CFR 843.25, we considered the possibility that a number of States may not authorize enforcement of counterpart provisions to section 720(a) of SMCRA, as of October 24, 1992 (62 FR 16743). We determined that in order to ensure compliance with section 720(a) in those States, OSM would provide direct Federal enforcement for any claims of damage caused by underground mining which occurs after October 24, 1992, and which predates State program amendments. The Federal regulation at 30 CFR 843.25(b) clarifies how direct Federal enforcement procedures will apply, to the extent they are initiated. The Federal regulation at 30 CFR 843.25(a) required us to make state-by-state determinations on how initial enforcement of the Energy Policy Act and implementing Federal regulations would occur. Enforcement could be accomplished through the State program amendment process, State enforcement, interim direct OSM enforcement, or joint State and OSM enforcement. In the July 28, 1995, **Federal Register** (60 FR 38677), we announced our decision on initial enforcement of underground coal mining water replacement requirements in Illinois. Based on the information provided by Illinois, we determined that initial enforcement of the water replacement requirements in Illinois

was not reasonably likely to be required and that implementation would be accomplished through the State program amendment process. Illinois would enforce the requirements for replacement of water supplies after it amended its program in accordance with Section 720(a) of SMCRA and the implementing Federal regulations. Therefore, we find that Illinois' regulations at 62 IAC 1784.14(e)(3)(D) and 1817.41(j) are no less effective than the counterpart Federal regulations at 30 CFR 784.14(e)(3)(iv) and 817.41(j), respectively.

C. Revisions to Illinois' Regulations That Relate to Pre-subsidence Surveys

Since approval of its original program in 1983, Illinois has segregated underground mining into two specific subsidence control plan categories. The first category is termed planned subsidence in which the extraction of a high percentage of coal results in immediate, predictable, and controlled subsidence. The second category, termed unplanned subsidence, includes mines that extract a lesser percentage of coal and leave long term support pillars to prevent subsidence from occurring. Since 1983, Illinois has required all underground mining operations, regardless of whether they are planned or unplanned subsidence operations, to provide a general survey of all renewable resource lands, structures, and facilities in the permit application. Illinois also required all planned subsidence operations to provide additional details on the structures and a plan for performing condition surveys. This was done through its regulations at 62 IAC 1784.20(a) and requirements in its underground mining permit application form.

The general survey included topography and location of all structures and facilities, including pipelines, occupied dwellings, public buildings, and cemeteries. By policy, Illinois had required the general survey to include information on water supplies since its water replacement regulation became effective in 1996. This additional information included location, ownership, and depth of existing drinking, residential, and domestic water supplies, including private wells, municipal wells, and springs. Illinois has found that the information provided in the application (including the baseline hydrologic information required at 62 IAC 1784.14 and the general survey information required at 62 IAC 1784.20(a) and by policy) is sufficient to assess the need for a subsidence control plan. Illinois stated that in its history of the regulating

underground mining, it has never exempted an applicant from submitting a subsidence control plan. Illinois also stated that because of the productivity of the lands found in Illinois and the frequency with which structures are encountered, it is highly unlikely that it will grant any future underground mining applicants exemptions from submitting subsidence control plans. With 16 years of experience in subsidence monitoring and mitigation under the Illinois program, Illinois has found that it is not necessary to require site specific pre-subsidence condition surveys at the time of permit application. Based on extensive research on subsidence impacts to both crop land and ground water conducted from 1985 to 1995 by the Illinois Mine Subsidence Research Program, Illinois also determined that it is not necessary to require site specific pre-subsidence water surveys at the time of permit application. Illinois revised existing 62 IAC 1784.20 and 1817.121 to include provisions relating to pre-subsidence surveys.

1. *62 IAC 1784.20(b)(7) Subsidence Control Plan—Unplanned Subsidence.* Illinois added new subsection (b)(7) for those areas where unplanned subsidence is projected to be used. If impacts could reasonably be expected to cause material damage, this new subsection requires the subsidence control plan to include a description of procedures to determine the quantity and quality of drinking, domestic, and residential water supplies in accordance with 62 IAC 1817.121(a)(2). The applicant may request an exemption from conducting surveys of protected water supplies if the applicant can demonstrate that material damage resulting from underground mining is not likely to occur. The demonstration must be based on site specific geotechnical information, stability design, and historical performance provided under 62 IAC 1784.20(b)(3) and (b)(5).

2. *62 IAC 1784.20(b)(8)(B) Subsidence Control Plan—Planned Subsidence.* Illinois added new subsection (b)(8)(B) for those areas where planned subsidence is projected to be used. If impacts could reasonably be expected to cause material damage, it requires a description of procedures to determine the condition of structures and facilities and the quantity and quality of drinking, domestic, and residential water supplies. If the applicant can demonstrate that material damage resulting from underground mining is not likely to occur, the applicant may request an exemption from conducting structure condition surveys and/or

surveys of drinking, domestic and residential water supplies required by 62 IAC 1817.121(a)(2). The applicant must base the demonstration on site specific geotechnical information, stability design, and historical performance provided under 62 IAC 1784.20(b)(3) and (b)(6).

3. *62 IAC 1817.121(a)(2) Measures to prevent or minimize damage.* Illinois' proposed regulation at 62 IAC 1817.121(a)(2) provides that, based on the requirements of 62 IAC 1784.20(b)(7) and (b)(8), the permittee must perform a survey of the condition of all structures and facilities that may be materially damaged or for which the reasonably foreseeable use may be diminished by subsidence. The permittee must also perform a survey of the quantity and quality of all drinking, domestic, and residential water supplies within the permit area, subsidence shadow area, and adjacent area that could be contaminated, diminished, or interrupted by subsidence. The permittee must pay for any technical assessment or engineering evaluation used to determine the pre-mining condition or value of such structures and facilities and the quantity and quality of drinking, domestic, or residential water supplies. The permittee must provide copies of the survey and any technical assessment or engineering evaluation to the property owner. Subsection (a)(2)(A) requires the permittee to perform or schedule the condition survey of structures and facilities a minimum of 120 days before undermining. The Department may approve a lesser time if justified by the permittee in writing. The permittee must provide a copy of the condition survey to the property owner and maintain a copy that it must provide to the Department upon request. The permittee must provide the Department with verification that the survey has been completed and forwarded to the property owner. Subsection (a)(2)(B) requires the permittee to complete the survey of drinking, domestic, and residential water supplies 120 days before the water delivery system is undermined. The Department may approve a lesser time if justified by the permittee in writing. The permittee must provide a copy of the water survey to the property owner and to the Department.

As shown above, Illinois requires site specific pre-subsidence condition surveys only for planned subsidence operations. Mines that demonstrate a well-engineered, stable mine plan (unplanned subsidence) are not required to perform a site specific condition survey. Applicants must base their

demonstration on site specific geotechnical parameters that are evaluated by using acceptable engineering equations and programs. Site specific pre-subsidence water surveys are required for all operations, unless an exemption has been granted under 62 IAC 1784.20(b)(7) or (b)(8)(B).

In a letter to us dated August 2, 1999 (Administrative Record No. IL-5044), Illinois discussed its regulation requirements at 62 IAC 1784.20(b)(7), 1784.20(b)(8)(B), and 1817.121(a)(2):

Illinois is maintaining a requirement for site specific condition surveys in the performance standards at 62 IAC 1817.121 for planned subsidence operations only. Planned subsidence condition surveys were historically required as part of the permit application process to serve as a method of determining the degree of material damage after subsidence. Proposed 1784.20(b)(8) will provide a clear avenue to require pre-subsidence condition surveys for planned subsidence operations. Exemptions from performing the detailed condition surveys will only be granted if a demonstration is made that site specific mine design, geology, and geotechnical stability data, as well as past experience of the mine and mines in the region, will render subsidence damage unlikely.

A survey of all private wells defining location, ownership, and depth will be required in the application for all underground mining operations. When an exemption from performing quantity and quality analysis of drinking, domestic, and residential water supplies is requested, the geotechnical evaluation of stability will be used to analyze the potential for mine subsidence. Mines that demonstrate a well-engineered, stable mine plan and demonstrate that overburden conditions will preclude impacts to water supplies will not be required to perform quantity and quality analysis. This demonstration will be based on site specific geotechnical parameters evaluated by using acceptable engineering equations and programs* * *. In addition to subsidence ground control evaluation, the thickness and lithology of the interburden between the well and the underground extraction area will be evaluated for potential roof failure propagation that could intercept the well bearing lithologic unit. Based on subsidence potential and potential roof failure impacts, wells will be site specifically evaluated for the necessity to sample and test for quality and quantity parameters prior to mining.

On April 27, 1999, the U.S. Court of Appeals for the District of Columbia Circuit vacated the Federal regulation at 30 CFR 784.20(a)(3) that required permittees to conduct pre-subsidence structural condition and water surveys (*National Mining Ass'n v. Babbitt*, 98-5320, D.C. Cir. 1999). The U.S. Court of Appeals ruled that, after enactment of the Energy Policy Act, the agency possessed the authority to require such surveys. However, the U.S. Court of

Appeals vacated 30 CFR 784.20(a)(3) because the regulation defined the area within which the pre-subsidence structural condition survey is required by reference to the angle of draw. The U.S. Court of Appeals' decision indicates through the use of the term "vacate" that all of 30 CFR 784.20(a)(3) is no longer valid; therefore, there is no counterpart Federal regulation that requires a pre-subsidence structural condition and water survey. While the decision of the U.S. Court of Appeals clearly states that the rule requiring a pre-subsidence survey at 30 CFR 784.20(a)(3) must be vacated, it might be argued that the vacation order only applies to the portion of the rule pertaining to structures, which is tied to the angle of draw, and not to the portion of the rule pertaining to water supplies, which is tied to the permit area and adjacent area. In either case, we can approve the Illinois rules. Illinois' proposed regulations at 62 IAC 1784.20(b)(7), 1784.20(b)(8)(B), and 1817.121(a)(2) that require surveys, unless an exemption is obtained under 62 IAC 1784.20(b)(7) or 1784.20(b)(8)(B), are not based on whether or not a structure or water supply is located within an angle of draw. They are based on an analysis of site specific geotechnical information, stability design, and historical performance information. The State would use this analysis to determine whether impacts could reasonably be expected to cause material damage to structures or water supplies within the permit, shadow, and adjacent areas. Illinois has 16 years experience in regulating underground coal mining operations, including subsidence monitoring and mitigation. As discussed above, Illinois provided technical support for its proposed regulations, including the exemption provisions at 30 CFR 1784.20(b)(7) and 1784.20(b)(8)(B). Because of the experience obtained during its years of regulating underground coal mining operations and the technical studies conducted in the State, Illinois determined that the structure condition and water survey required by 62 IAC 1817.121(a)(2) is not necessary where, on a site specific basis, an acceptable engineering and technical analysis demonstrates that the proposed mine will not result in subsidence-related damage to structures or water supplies. Therefore, we find that Illinois' proposed requirements for a pre-subsidence survey are not inconsistent with the U.S. Court of Appeals' decision and are no less effective than the Federal regulation requirements relating to a pre-subsidence survey at 30 CFR

784.20(a). We also find that Illinois' requirements at 62 IAC 1784.20(b)(7), 1784.20(b)(8)(B), and 1817.121(a)(2) are not inconsistent with section 720(a) of SMCRA or the Federal regulation requirements at 30 CFR 784.20 and 817.121 concerning subsidence control. Therefore, we are approving them.

D. Revisions to Illinois' Regulations That Relate to Subsidence Control Plans

With the exceptions discussed in Finding C above and the following exceptions, Illinois' requirements for a subsidence control plan at 62 IAC 1784.20(b) are substantively identical to the Federal requirements at 30 CFR 784.20(b).

1. 62 IAC 784.20(b)(3). Illinois recodified existing subsection (c) as new subsection (b)(3) and revised it to require the subsidence control plan to include a description of the lithology of underlying strata and geotechnical stability parameters. Illinois also required applicants to consider potential underground mining impacts on ground water supplies in the description of physical conditions.

(3) A description of the physical conditions, such as depth of cover, seam thickness, lithology of overlying and underlying strata, and geotechnical stability parameters that affect the likelihood or extent of subsidence and subsidence related damage or potential underground mining impacts on ground water supplies.

Illinois added the requirement for a description of the underlying strata to emphasize the mine floor as part of the analysis. Illinois added the requirement for geotechnical stability parameters to emphasize the need for site specific test results or standard acceptable parameters for mine stability evaluation. Illinois added the requirement that the description of physical conditions consider the effect of "potential underground mining impacts on ground water supplies" to allow analysis of potential impacts to water supplies.

The counterpart Federal regulation at 30 CFR 784.20(b)(3) lists the minimal information that may be required to analyze the likelihood or extent of subsidence or subsidence-related damage. It requires "a description of the physical conditions, such as depth of cover, seam thickness and lithology of overlying strata, that affect the likelihood or extent of subsidence and subsidence-related damage." Illinois' revised regulation includes the Federal requirements for information and emphasizes additional information that it considers necessary for analysis of potential impacts from subsidence. Therefore, we find that Illinois' regulation at 62 IAC 1784.20(b)(3) is no

less effective than the Federal regulation at 30 CFR 784.20(b)(3).

2. 62 IAC 1784.20(b)(5). Illinois recodified existing subsection (d) as new subsection (b)(5). It requires a detailed description of the subsidence control measures for those areas where unplanned subsidence is projected to be used. Illinois also recodified existing subsections (d)(1) through (3) as subsections (b)(5)(A) through (C) without change. Existing subsection (d)(4) was recodified as new subsection (b)(5)(D) and was revised to require the description of the subsidence control measures to include those measures to be taken on the surface to prevent or minimize material damage or diminution in value of the surface. Illinois removed existing subsection (d)(5). New subsection (b)(5)(E) requires a description of the geotechnical and engineering analysis of the mining geology and geometry, percent extraction, and historic performance to substantiate a stable subsidence control plan.

Illinois' regulations at 62 IAC 1784.20(b)(5)(A) through (D) are substantively identical to the Federal regulations at 30 CFR 784.20(b)(5)(i) through (iv). The Federal regulations do not contain a specific counterpart to Illinois' provision at 62 IAC 1784.20(b)(5)(E). However, Illinois added subsection (b)(5)(E) to provide a clearer regulatory basis to require information such as floor, coal, and roof strength analysis as well as specific mine design past performance when considered necessary. Neither Illinois' regulation at 62 IAC 1784.20(b)(5) nor the counterpart Federal regulation at 30 CFR 784.20(b)(5) limit the information on subsidence control measures that a regulatory authority may require in the subsidence control plan. Therefore, we find that Illinois' regulation at 62 IAC 1784.20(b)(5) is no less effective than the Federal regulation at 30 CFR 784.20(b)(5).

3. 62 IAC 1784.20(b)(9). New subsection (b)(9) requires a description of the measures to be taken in accordance with 62 IAC 1817.41(j) and 1817.121(c) to replace adversely affected protected water supplies or to mitigate or remedy any subsidence related material damage to the land and protected structures. At subsection (b)(9)(A) the applicant must provide procedures to determine the existence and degree of material damage or diminution of value or foreseeable use of the surface, structures and facilities, or water quality and quantity. The procedures must address resolution of disputes between the landowner and the permittee over the existence, amount,

level or degree of damage, such as third party arbitration. At subsection (b)(9)(B), the applicant must provide a plan for determining an appropriate present worth amount. The applicant must also describe how he or she will resolve disputes with the landowner over this amount. For example, the applicant could propose to use third party arbitration.

Illinois' proposed requirements at 62 IAC 1784.20(b)(9) are substantively the same as the Federal requirements at 30 CFR 784.20(b)(8). There are no Federal counterparts to Illinois' proposed regulations at 62 IAC 1784.20(b)(9)(A) and (B). However, Illinois' proposed regulations are based on requirements that we previously approved in 62 IAC 1784.20(f). They enhance the provisions of 62 IAC 1784.20(b)(9) by requiring additional information that the permittee will need in meeting the requirements of 62 IAC 1817.41, concerning replacement of protected water supplies, and 62 IAC 1817.121(c)(2), concerning repair or compensation for damage to structures and facilities. Therefore, we find that 62 IAC 1784.20(b)(9) is no less effective than the counterpart Federal regulation at 30 CFR 784.20(b)(8), and we are approving it.

E. Revisions to Illinois' Regulations That Relate to Subsidence Control

1. *62 IAC 1817.121(c)(2) Repair or compensation for damage to structures and facilities.* At subsection (c)(2), Illinois added the heading "Repair or compensation for damage to structures and facilities." Illinois also revised subsection (c)(2) to require the permittee to promptly repair or compensate the owner for material damage resulting from subsidence caused to any structure or facility that existed at the time of the coal extraction under or adjacent to the materially damaged structure. If the repair option is selected, the permittee must fully rehabilitate, restore or replace the damaged structure. If compensation is selected, the permittee must compensate the owner of the damaged structure for the full amount of the decrease in value resulting from the subsidence-related damage. The permittee may provide compensation by the purchase, before mining, of a non-cancelable premium-prepaid insurance policy. These requirements apply only to subsidence-related damage caused by underground coal extraction conducted after February 1, 1983.

Illinois' revised regulation at 30 CFR 1817.121(c)(2) is substantively the same as the Federal regulation at 30 CFR 817.121(c)(2) with the following exceptions:

a. The Federal regulation at 30 CFR 817.121(c)(2) requires the permittee to repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building, occupied residential dwelling, and related structures. At 62 IAC 1817.121(c)(2), Illinois uses the terminology "structures and facilities" in place of the Federal terminology. Illinois is using this terminology because its regulation at 62 IAC 1817.121 has required permittees to correct material damage from subsidence caused to all structures and facilities by repairing the damage or compensating the owner since its effective date on February 1, 1983. Because Illinois' terminology would include all non-commercial buildings, occupied residential dwellings, and related structures, we find that it will not make 62 IAC 1817.121(c)(2) less effective than the counterpart Federal regulation at 30 CFR 817.121(c)(2).

b. The Federal regulation at 30 CFR 817.121(c)(2) requires repair or compensation for material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. Illinois' regulation at 62 IAC 1817.121(c)(2) requires repair or compensation for material damage resulting from subsidence caused to any structure or facility that existed at the time of the coal extraction under or adjacent to the materially damaged structure. In its August 2, 1999, submittal, Illinois indicated that its change in language from "existed at the time of mining" to "existed at the time of the coal extraction under or adjacent to the materially damaged structure" makes it clearer as to how to monitor and track which structures are covered. Illinois stated that "[i]t does not change the intent of covering all structures in existence at the time of mining." Because subsidence damage resulting from mining could not occur to a structure until coal is extracted and because Illinois interprets its language to cover all structures in existence at the time of mining, we find that this change in language will not make 62 IAC 1817.121(c)(2) less effective than the Federal regulation at 30 CFR 817.121(c)(2).

c. The Federal regulation requirements at 30 CFR 817.121(c)(2) apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992. Illinois' regulation requirements at 62 IAC 1817.121(c)(2) apply to subsidence-related damage caused by underground coal extraction conducted

after February 1, 1983. Because the Illinois program has required permittees to correct material damage resulting from subsidence caused to any structures or facilities under 62 IAC 1817.121 since February 1, 1983, we are approving this regulation.

2. *62 IAC 1817.121(c)(3) Adjustment of bond amount for subsidence damage.* Existing subsection (c)(3) was removed. New subsection (c)(3) provides requirements for adjustment of the performance bond amount when subsidence-related material damage to protected land, structures or facilities occur or when contamination, diminution, or interruption to a water supply occurs. The Department must require the permittee to obtain additional performance bond in the amount of the estimated cost of the repairs if the permittee will be repairing the damage, or in the amount of the decrease in value if the permittee will be compensating the owners, or in the amount of the estimated cost to replace the protected water supply if the permittee will be replacing the water supply. The additional performance bond must remain in force until the repair, compensation, or replacement is completed. If repair, compensation, or replacement is completed within 90 days of the occurrence of damage, no additional bond is required. This time frame may be extended, but not to exceed one year, if the permittee demonstrates that subsidence is not complete, that not all probable subsidence-related material damage has occurred to lands or protected structures, or that not all reasonable anticipated changes have occurred affecting protected water supplies. The permittee may also use appropriate terms and conditions for liability insurance to assure that the financial responsibility to comply with subsection (c) is in place.

Illinois' regulation requirements at 62 IAC 1817.121(c)(3) are substantively identical to the Federal regulation requirements at 30 CFR 817.121(c)(5) with the following exception: There is no direct Federal counterpart to Illinois' provision concerning the use of liability insurance to assure financial responsibility. However, the preamble to the Federal regulation at 30 CFR 817.121(c)(5) specifically addresses the option of using liability insurance that would be implemented by Illinois' provision (62 FR 16741-167842, March 31, 1995). In that preamble, we stated that under 30 CFR 800.14(c), if the liability insurance policy required under section 30 CFR 800.60 would provide coverage sufficient to fund the reclamation of subsidence damage, that

insurance may be substituted for increased bond. Therefore, we find that Illinois' proposed regulation at 62 IAC 1817.121(c)(3) is consistent with and no less effective than the counterpart Federal regulation at 30 CFR 817.121(c)(5).

IV. Summary and Disposition of Comments

Public Comments

We requested public comments on the proposed amendment, but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Illinois program (Administrative Record No. IL-5045). By letter dated September 2, 1999, the Natural Resources Conservation Services (NRCS) provided comments (Administrative Record No. IL-5047). However, these comments did not pertain to the Illinois program revisions concerning subsidence control and water replacement. Therefore, we will discuss NRCS's comments in our future final rule document for IL-097-FOR, Part II.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written agreement from the EPA for those provisions of the program amendment that relate to air or water quality standards issued 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.*). None of the revisions that Illinois proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask the EPA to agree on the amendment.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the proposed amendment from the EPA (Administrative Record No. IL-5045). The EPA did not respond to our request.

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

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. None of the revisions that Illinois proposed to make in this amendment pertain to historic properties. However, on August 10, 1999, we requested comments from both the SHPO and ACHP (Administrative Record No. IL-5045), but neither responded to our request.

V. Director's Decision

Based on the above findings, we approve the revisions made to 62 IAC 1701. Appendix A, 1784.14, 1784.20, 1817.41, and 1817.121 in the amendment submitted by Illinois on August 2, 1999. We approve the regulations that Illinois proposed with the provision that they be published in identical form to the regulations submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 913, which codify decisions concerning the Illinois program. We are making this final rule effective immediately to expedite the State program amendment process and to encourage Illinois to bring its program into conformity with the Federal standards. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review 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 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

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on 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 corresponding 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. Therefore, this rule will ensure that existing requirements previously published 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 corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies under 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 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 29, 1999.

Richard J. Seibel,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 913 is amended as set forth below:

PART 913—ILLINOIS

1. The authority citation for Part 913 continues to read as follows:

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

2. Section 913.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 913.15 Approval of Illinois regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
August 2, 1999	December 6, 1999	62 IAC 1701. Appendix A; 1784.14(b)(1), (b)(1)(A) (i) and (ii), (b)(1)(B), (e)(3)(D); 1784.20(a), (a)(1) and (2), (b), (b)(1) through (10); 1817.41(j); 1817.121(a)(1) through (4), (c)(1) through (3).

[FR Doc. 99-31516 Filed 12-3-99; 8:45 am]
BILLING CODE 4310-05-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[UT-001-0016a; FRL-6482-9]

Approval and Promulgation of Air Quality Implementation Plans; Utah; Road Salting and Sanding, Control of Installations, Revisions to Salting and Sanding Requirements and Deletion of Non-Ferrous Smelter Orders, Incorporation by Reference, and Nonsubstantive Changes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On February 1, 1995, the Governor of the State of Utah submitted State Implementation Plan (SIP) revisions for the purpose of establishing new requirements for road sanding and salting in section 9.A.6.7 (referred to by the State as section IX.A.6.g in a renumbering revision that has yet to be approved by EPA) of the SIP and in UACR R307-1-3, updating the incorporation by reference in R307-2-1, deleting obsolete measures for nonferrous smelters in R307-1-3, and nonsubstantive changes to R307-1-1 and R307-1-3. This action is being taken under section 110 of the Clean Air Act (Act).

DATES: This rule is effective on February 4, 2000 without further notice, unless EPA receives adverse comment by January 5, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the *Federal Register* informing the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency,

Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202 and copies of the Incorporation by Reference material are available at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Copies of the state documents relevant to this action are available for public inspection at the Utah Department of Environmental Quality, Division of Air Quality, 150 North 1950 West, Salt Lake City, Utah 84114-4820.

FOR FURTHER INFORMATION CONTACT: Cindy Rosenberg, EPA, Region VIII, (303) 312-6436.

SUPPLEMENTARY INFORMATION:

Throughout this document, wherever "we," "us," or "our" are used, we mean the Environmental Protection Agency (EPA).

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I. EPA's Final Action

What Action is EPA Taking in this Direct Final Rule?

We are approving the Governor's submittal of February 1, 1995, that establishes new requirements for road salting and sanding in section 9.A.6.7 (referred to by the State as section IX.A.6.g) of the SIP and in UACR R307-1-3. Concurrently, the State's "Incorporation by Reference" was changed in UACR R307-2-1. This same submittal also deletes obsolete rules for nonferrous smelter orders in UACR R307-1-3, and makes nonsubstantive changes to R307-1-1 and R307-1-3.

We are publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the "Proposed Rules" section of today's *Federal Register* publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision

should adverse comments be filed. This rule will be effective February 4, 2000 without further notice unless the Agency receives adverse comments by January 5, 2000. If we receive adverse comments, we will publish a timely withdrawal in the *Federal Register* informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

II. Summary of SIP Revision

A. What Revisions Were Made to the SIP?

This revision made changes to the road salting and sanding requirements in section 9.A.6.7 (referred to by the State as section IX.A.6.g) of the SIP and in UACR R307-1-3. This regulatory revision achieves the 20% emission reduction relied upon in the SIP's attainment demonstration. The State revised the SIP and UACR R307-1-3.2.7 to establish the use of salt that is at least 92% sodium chloride as Reasonably Available Control Technology (RACT) for road anti-skid treatment. Entities applying a material other than this are required to either demonstrate that the material generates no more emissions than salt which is at least 92% sodium chloride, or to sweep the affected roadways using vacuum street sweeper technology within three days of the end of the storm for which the material was applied. Recordkeeping requirements were also imposed. Concurrent with this action, the State's incorporation by reference under R307-2-1 was updated to change the recently amended date of the SIP from December 18, 1992 to December 9, 1993.

In addition to the changes to road salting and sanding, UACR R307-1-3.10, "Non-Ferrous Smelter Orders," was deleted due to its being obsolete because the nonferrous smelter orders expired on January 1, 1988.

After the revised rules were adopted, the State identified a number of typographical errors in the printed version of the road salting and sanding rules in "Control of Installations." This