

DEPARTMENT OF THE INTERIOR**Office of Surface Mining Reclamation and Enforcement****30 CFR Part 902**

[SATS No. AK-006]

Alaska Regulatory Program**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the Alaska regulatory program (hereinafter, the "Alaska program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Alaska proposes revisions to and additions of rules about the description of hydrology and geology; protection of fish and wildlife; protection of the hydrologic balance; the requirement that certain plans be designed, constructed, and/or certified by a registered professional engineer; the small operator assistance program; bonding; topsoil protection; the western alkaline mine initiative; design precipitation events; stream channel protection; impoundment design and construction; water monitoring; blasting; coal mine waste, refuse piles and excess spoil; thick and thin overburden; auger mining; inspection of abandoned sites; administrative procedures for civil penalties; individual civil penalties; petitions to designate areas unsuitable for mining; underground mining, subsidence, and replacement of drinking water supplies; extraction of coal incidental to extraction of other minerals; and definitions. Alaska also proposed to demonstrate that a reference to the Alaska Dam Safety rules incorporates the hazard evaluation in accordance with the Natural Resources Conservation Service (NRCS) Technical Release 60 (TR-60); the necessity for an exemption from topsoil removal where permafrost or cold weather conditions exist in the State, that the Commissioner of the Alaska Program (Commissioner) can determine who should approve minimum requirements for shrub stocking and planting arrangements on land where the post-mining land use is designated as fish and wildlife habitat, recreation, shelter belts, and forestry; that no prime farmlands exist in the State; and that notarization of a certified statement in a bond release application is not necessary for the statement to be enforceable. Alaska intends to revise its program to be consistent with the

corresponding Federal regulations and SMCRA.

This document gives the times and locations that the Alaska program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., m.d.t. August 18, 2004. If requested, we will hold a public hearing on the amendment on August 13, 2004. We will accept requests to speak until 4 p.m., m.d.t. on August 3, 2004.

ADDRESSES: You may submit comments, identified by AK-006, by any of the following methods:

- *E-mail:* jfulton@osmre.gov. Include AK-006 in the subject line of the message.
- *Mail:* James F. Fulton, Chief, Denver Field Division Office of Surface Mining Reclamation and Enforcement, P.O. Box No. 4666, Denver, CO 80201-6667.
- *Hand Delivery/Courier:* James F. Fulton, Chief Denver Field Division, Office of Surface Mining, Reclamation and Enforcement, 1999 Broadway, Suite 3320, Denver, CO 80202-5733.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Alaska program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting Office of Surface Mining Reclamation and Enforcement (OSM's) Denver Field Division. In addition, you may review a copy of the amendment during regular business hours at the following locations:

James F. Fulton, Chief, Denver Field Division, Office of Surface Mining Reclamation and Enforcement, P.O. Box No. 4666, 1999 Broadway, Suite 3320, Denver, CO 80201-6667, 303-844-1400 extension 1424, jfulton@osmre.gov.

Stan Foo, Mining Chief, Division of Mining, Land and Water, Alaska Department of Natural Resources, 550 W. 7th Avenue, Suite 900D, Anchorage, AK 99501, (907) 269-8503, stanf@dnr.state.ak.us.

FOR FURTHER INFORMATION CONTACT:

James F. Fulton Telephone: 303-844-1400 ext. 1442. Internet: jfulton@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Alaska Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

I. Background on the Alaska Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Alaska program on March 23, 1983. You can find background information on the Alaska program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Alaska program in the March 23, 1983, **Federal Register** (48 FR 12274). You can also find later actions concerning Alaska's program and program amendments at 30 CFR 902.10, 902.15 and 902.16.

II. Description of the Proposed Amendment

By letter dated May 11, 2004, Alaska sent us a proposed amendment to its program, (State Amendment Tracking System (SATS) No. AK-006, administrative record No. AK-9) under SMCRA (30 U.S.C. 1201 *et seq.*). Alaska sent the amendment in response to portions of letters dated May 7, 1986, December 16, 1988, February 7, 1990, June 4, 1996, and June 19, 1997 (administrative record Nos. AK-01, AK-03, AK-06, AK-07 and AK-09), that we sent to Alaska in accordance with 30 CFR 732.17(c). Alaska also submitted the amendment in response to required program amendments codified at 30 CFR 902.16(a) and (b). Alaska submitted one provision at its own initiative. The full text of the program amendment is

available for you to read at the locations listed above under **ADDRESSES**.

Specifically, Alaska proposes to make the following additions or revisions to its rules.

Description of Hydrology and Geology

Revise 11 AAC 90.043 (AAC) 90.043(b), concerning hydrology and geology, to require that all water quality analyses performed to meet the requirements of 11 AAC 90.043, 11 AAC 90.047, or 11 AAC 90.049, must be conducted according to the methodology in the most current edition of the Standard Methods for the Examination of Water and Wastewater, or the methodology in 40 CFR 136 and 40 CFR 434.

Revise 11 AAC 90.045(a) by requiring a description of the geology within the permit and adjacent areas to include the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest coal seam to be mined which may be adversely impacted by mining, and to require that the description shall include the areal and structural geology of the permit and adjacent areas, and other parameters which influence the required reclamation and the occurrence, availability, movement, quantity, and quality of potentially impacted surface and ground waters.

Add 11 AAC 90.045(b) to require that test borings, or core samples from the proposed permit area must be collected and analyzed down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined, or any aquifer below the lowest coal seam to be mined that may be adversely impacted, and to state what the analysis must include.

Add 11 AAC 90.045(c) to allow the Commissioner to require, at his or her discretion, that test borings or core samplings be collected and analyzed to greater depths within the proposed permit area or, for the area outside the proposed permit area, to provide for evaluation of the impact of the proposed activities on the hydrologic balance.

Add 11 AAC 90.045(d) to require that an application for an underground mine include a separate description of the geology of the area proposed to be affected by surface operations and facilities, surface land overlying coal to be mined, and the coal to be mined, and to state what must be included in the description.

Protection of Fish and Wildlife

Add 11 AAC 90.045(e) to provide an opportunity for an applicant to request that the requirements of 11 AAC 90.045(b) and (d) be waived, and require

that the Commissioner will, in his or her discretion, grant the request upon a written determination that the requirement is unnecessary because other equivalent information is available.

Revise 11 AAC 90.057, concerning fish and wildlife information, by adding that upon request, the Commissioner shall provide the resource information and the protection and enhancement plan to the U.S. Department of the Interior, Fish and Wildlife Service (Service) regional or field office for their review, and that the information shall be provided within 10 days of receipt of the request from the Service.

Revise 11 AAC 90.457(c)(3) to require, for areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products, that minimum stocking and planting arrangements be specified by the Commissioner, or his designee, on the basis of local conditions.

Protection of the Hydrologic Balance

Add 11 AAC 90.085(e), concerning the plan for protection of the hydrologic balance, to tie the cumulative hydrologic impact assessment to the "cumulative impact area."

Revise 11 AAC 90.349(l), concerning discharge of water or coal mine waste into an underground mine, to prohibit such discharge unless the operator demonstrates that the discharge will minimize disturbance to the hydrologic balance on the permit area, prevent material damage outside the permit area and otherwise eliminate public hazards resulting from surface mining activities.

Design, Construction and/or Certification By a Registered Professional Engineer

Revised 11 AAC 90.089(a)(1) and 90.336(a) to require that the design and construction of a siltation structure, temporary or permanent impoundment, and coal mine waste dam or embankment, be prepared and certified by, or under the direction of, a registered professional engineer who is experienced or trained in the design and construction of impoundments.

Revise 11 AAC 90.337(a) to require that each permanent or temporary impoundment must be inspected by, or under the supervision of, a registered professional engineer or other qualified professional specialist under the direction of a professional engineer, and that the professional engineer or specialist shall be experienced or trained in the construction of impoundments.

Revise 11 AAC 90.491(f)(1) to require that plans and drawings for primary

roads be prepared by, or under the direction of, and certified by a qualified registered professional engineer or a qualified registered professional land surveyor, with experience or training in the design and construction of roads.

Small Operator Assistance Program

Revise 11 AAC 90.173(a)(2), to allow eligibility for assistance under the small operator assistance program if the applicant establishes that the probable total, actual, and attributed production for each year of the permit will not exceed 300,000 tons.

Revise 11 AAC 90.173(b)(2) and (3) to determine that production will be attributed to the applicant based upon, respectively, (1) the pro rata share of coal produced by operations in which the applicant owns more than ten percent interest, or (2) all coal produced by persons who own more than ten percent of the applicant or who directly or indirectly control the applicant by reason of stock ownership, direction of the management, or in any other manner.

Revise 11 AAC 90.179(a), concerning data required in an application for small operator assistance, to allow the Commissioner to require, in order for the applicant to determine the probable hydrologic consequences of the operation, drilling and a statement of the results of test borings or core samplings from the proposed permit area.

Add 11 AAC 90.179(b) to require data, in an application for assistance under the small operator program, sufficient for (1) the development of cross-section maps and plans required by 11 AAC 90.065, (2) the collection of archaeological and historic information and related plans required by 11 AAC 90.041 and any other archaeological and historic information required by the Commissioner, (3) pre-blast surveys required by 11 AAC 90.373, (4) the collection of site-specific resources information, (5) the production of protection and enhancement plans for fish and wildlife habitats required by 11 AAC 90.057 and 11 AAC 90.423, and (6) information and plans for any other environmental values required by the Commissioner under the Act.

Add 11 AAC 90.179(c) to require that data collected under the small operator assistance program must be made available to interested persons as provided in Alaska Statutes (AS) 27.21.100.

Revise 11 AAC 90.185(a)(4) and (5) to require that an applicant for assistance under the small operator program shall reimburse the department for the cost of services rendered under 11 AAC 90.179

if the applicant has actual and attributed production of coal exceeding 300,000 tons during any consecutive 12-month period during the term of the permit for which the assistance is provided; or transfers, sells, or assigns the permit to another person whose total actual and attributed production exceeds 300,000 tons during any consecutive 12-month period of the remaining term of the permit (in this case, the applicant and its successor are jointly and severally obligated to reimburse the department).

Bonding

Revise 11 AAC 90.201(d), concerning incremental bonding, to require that the independent increments must be of sufficient size and configuration to provide for efficient reclamation operations should reclamation by the regulatory authority become necessary.

Add 11 AAC 90.201(f), concerning the requirement to file a bond, to require that the operator maintain adequate bond coverage at all times and to state that, except as provided in 11 AAC 90.209(c), operating without a bond is a violation of a condition upon which the permit is issued.

Revise 11 AAC 90.211(a), concerning bond release procedure and criteria, to require the permittee to include in the application for each phase of bond release, a statement which certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of AS 27.21, 11 AAC 90, and the approved reclamation plan.

Topsoil Protection

Revise 11 AAC 90.311(g), concerning the removal of topsoil, to provide an exemption, based on accepted construction and reclamation practices for arctic permafrost or similar cold-weather conditions, from the requirements for removal, stockpiling, and redistribution of topsoil and other materials, if the Commissioner authorizes the handling of the material as part of the backfilling and grading process under 11 AAC 90.441 and 11 AAC 90.443.

Revise 11 AAC 90.443(k)(2), concerning backfilling and grading requirements, to require that all topsoil be removed segregated, stored and redistributed in accordance with 11 AAC 90.311 to 90.315.

Western Alkaline Mine Initiative

Revise 11 AAC 90.323(a), concerning water quality standards, to refer to an exception at 11 AAC 90.323(b) from the requirement that any discharge of water from an underground working to surface water and all surface drainage from the

disturbed area, including any disturbed area that has been graded, seeded, or planted, must pass through one or more siltation structures before leaving the permit area, unless the Commissioner finds that conditions such as permafrost or ice-covered ponds will allow the drainage to meet applicable State and Federal water quality laws and regulations without treatment, and until removal is approved by the Commissioner under 11 AAC 90.331(e).

Revise 11 AAC 90.323(b) to state that the Commissioner may allow other sediment control measures for primary sediment control for disturbed areas that have been regraded, respread with topsoil, and stabilized against erosion, if the Commissioner and the Environmental Protection Agency have approved the use of best management practices as the effluent limitation.

Revise 11 AAC 90.323(c) to require that the operator shall meet all applicable Federal and State water quality laws and regulations for the mixed drainage from the permit area when there is mixing of drainage from disturbed, reclaimed, and undisturbed areas.

Revise 11 AAC 90.331(e), concerning siltation structures, to state that unless removal is authorized under 11 AAC 90.232(b), a siltation structure may not be removed before the Commissioner's approval under 11 AAC 90.323(b), the untreated drainage from the disturbed area meets, and is expected to permanently meet, the applicable State and Federal water quality laws and regulations for the receiving stream (after the disturbed area has been stabilized and revegetated), and no earlier than two years after the last augmented seeding.

Design Precipitation Events

Revise 11 AAC 90.325(b) and (c) to require that each temporary and permanent diversion be designed and constructed to pass, respectively, the 2-year, 6-hour, and the 10-year, 6-hour, discharge, or larger event specified by the Commissioner.

Revise 11 AAC 90.327(b)(2) to require that each stream channel diversion be designed and constructed so that the combination of channel, bank, and flood plain configurations will be adequate to pass safely the 10-year, 6-hour, discharge for temporary diversions, the 100-year, 6-hour, discharge for permanent diversions, or larger events specified by the Commissioner based on the period of use and local conditions, and to require that the capacity of the channel itself must be at least equal to the capacity of the unmodified stream

channel immediately upstream and downstream from the diversion.

Revise 11 AAC 90.331(d)(1), concerning siltation structures, to require that each sedimentation pond must be designed, constructed, and maintained to contain or treat the 10-year, 24-hour precipitation event ("design event") unless a lesser design event is approved by the Commissioner based on terrain, climate, other site-specific conditions and on a demonstration by the operator that the effluent limitations of 11 AAC 90.323 will be met.

Add 11 AAC 90.331(h), concerning other treatment facilities, to require (1) other treatment facilities shall be designed to treat the 10-year, 24-hour precipitation event unless a lesser design event is approved by the Commissioner based on terrain, climate, other site-specific conditions and a demonstration by the operator that the effluent limitations of 11 AAC 90.323 will be met; and (2) other treatment facilities shall be designed in accordance with the applicable requirements of this section.

Revise 11 AAC 90.336(b)(1) and (2) to require that impoundments must contain a combination of principal and emergency spillways designed and constructed to pass safely the design peak discharge with the following recurrence interval, or larger event specified by the Commissioner based on the period of use and local conditions, (1) for a temporary impoundment, the 25-year, 6-hour, discharge; or (2) for a permanent impoundment, the 100-year, 6-hour, discharge.

Revise 11 AAC 90.391(n) to require that surface water runoff from the areas adjacent to and above valley fills must be diverted away from the fill, and surface runoff from the fill itself must be diverted into stabilized diversion channels designed to pass safely the 100-year 6-hour discharge or larger event specified by the Commissioner based on local conditions.

Revise 11 AAC 90.407(c) to require that surface runoff that may cause instability or erosion of the coal mine waste dam or embankment must be diverted into stabilized channels designed to pass safely the 100-year 6-hour discharge.

Stream Channel Protection

Revise 11 AAC 90.327(b)(1), concerning stream channel diversions, to clarify the meaning of "erosion control structures" by adding that they are features such as channel lining structures, retention basins, and artificial roughness structures used in diversions.

Add 11 AAC 90.491(f)(3) to require that natural stream channels shall not be altered or relocated without the prior approval of the Commissioner in accordance with 11 AAC 90.321 through 11 AAC 90.327 and 11 AAC 90.353.

Add 11 AAC 90.491(f)(4) to require that, except as provided in 11 AAC 90.491(e), structures for perennial or intermittent stream channel crossings shall be made using bridges, culverts, low-water crossings, or other structures designed, constructed, and maintained using current, prudent engineering practices, and that the Commissioner shall ensure that low-water crossings are designed, constructed, and maintained to prevent erosion of the structure or streambed and additional contributions of suspended solids to steam flow.

Impoundment Design and Construction

Revise 11 AAC 90.336(f), concerning impoundment design and construction, to correct the reference to the Alaska Dam Safety Program at 11 AAC 93.151—11 AAC 93.201.

Water Monitoring

Revise 11 AAC 90.345(e), concerning surface and ground water monitoring, to require monitoring of each stream, lake, and other surface water body that may be affected by the mining operation or that will receive a discharge, and at upstream locations.

Blasting

Revise 11 AAC 90.375(f) to require the operator to publish a blasting schedule in local newspapers, at least 10 days, but not more than 30 days, before beginning a blasting program.

Revise 11 AAC 90.375(g) to require that an operator must distribute a revised blasting schedule at least 10 days, but not more than 30 days, before blasting when the area covered by the schedule changes or actual time periods for blasting significantly differ from the original schedule.

Coal Mine Waste, Refuse Piles and Excess Spoil

Revise 11 AAC 90.391(b), concerning disposal of excess spoil or coal mine waste, to require that the fill and associated drainage system be designed and certified by a registered professional engineer experienced in the design of similar earth and waste structures.

Revise 11 AAC 90.391(h)(2) to provide for disposal of nontoxic and nonacid forming coal mine waste in excess spoil fills if the operator demonstrates to the Commissioner, before the Commissioner approves of the disposal, that the placement of such

material is consistent with the design stability of the fill.

Add 11 AAC 90.391(l), concerning disposal of excess spoil or coal mine waste, to require that the final configuration of the refuse pile shall be suitable for the approved post-mining land use; allow terraces to be constructed on the outslope of the refuse pile if required for stability, control or erosion, conservation of soil moisture, or facilitation of the approved post-mining land use, and require that the grade of the outslope between terrace benches shall not be steeper than 2h:1v (50 percent).

Revise 11 AAC 90.395(a), concerning coal mine waste, to require that (1) all coal mine waste, that will be disposed of in an area other than the mine workings or excavations, must be placed in new or existing disposal areas within a permit area, which are approved for this purpose, and (2) that coal mine waste must be hauled or conveyed and placed for final placement in a controlled manner to prevent mass movement during and after construction.

Revise 11 AAC 90.397(a), concerning inspections of excess spoil, underground development waste, or coal processing waste disposal areas, to require that the inspections be conducted by or under the direction of a registered professional engineer experienced in the construction of similar earth and waste structures.

Revise 11 AAC 90.401(a), concerning coal mine waste and refuse piles, to add the requirement that coal mine waste disposal areas that do not impound water, slurry, or other liquid or semi-liquid material comply with the requirements of 30 CFR 77.214 and 77.215.

Revise 11 AAC 90.401(d), concerning coal mine waste and refuse piles, to make an editorial correction to a referenced rule citation.

Revise 11 AAC 90.401(e), concerning coal mine waste and refuse piles, to allow less than four feet of cover over a regraded coal mine waste disposal area if the operator, based upon a physical and chemical demonstration, ensures that the requirements of 11 AAC 90.451 through 90.457 will be met.

Add 11 AAC 90.407(f), concerning impounding structures constructed of or impounding coal mine waste, to require that at least 90 percent of the water stored during the design precipitation event shall be removed within the 10-day period following the design precipitation event.

Thick and Thin Overburden

Revise 11 AAC 90.443(a) to allow for exceptions to the requirements to return all spoil to the mined out area and regrade to the approximate original contour if the operator demonstrates conditions of thick or thin overburden.

Revise 11 AAC 90.443(i) to state that where thin overburden occurs within the permit area, the permittee at a minimum shall (1) use all spoil and other waste materials available from the entire permit area to attain the lowest practicable grade, but not more than the angle of repose, and (2) meet the requirements of 11 AAC 90.443(a)(2) through (k).

Revise 11 AAC 90.443(m) to require where thick overburden occurs within the permit area, the permittee at a minimum shall (1) restore the approximate original contour and then use the remaining spoil and other waste materials to attain the lowest practicable grade, but not more than the angle of repose, (2) meet the requirements of 11 AAC 90.443(a)(2) through (k), and (3) dispose of any excess spoil in accordance with 11 AAC 90.391.

Auger Mining

Revise 11 AAC 90.447(c)(1) to require that auger holes must be sealed within 72 hours after completion with an impervious and noncombustible material, if the holes are discharging water containing acid- or toxic-forming material, and that, if sealing is not possible within 72 hours, the discharge shall be treated commencing within 72 hours after completion to meet applicable effluent limitations and water-quality standards until the holes are sealed.

Inspections of Abandoned Sites

Revise 11 AAC 90.601 by adding rules at paragraphs (h) and (i) concerning inspections of abandoned sites.

Administrative Procedures for Civil Penalties

Revise 11 AAC 90.629(a) to allow 30 days from the date a proposed assessment or reassessment of a penalty was received by the operator for the operator to submit a written request for review of the assessment.

Revise 11 AAC 90.631(a) to provide that an operator may contest a proposed penalty or fact of a violation by requesting a hearing in accordance with AS 27.21.250(b) or within 30 days of the date of service under 11 AAC 90.629(c), whichever is later.

Individual Civil Penalties

Add 11 AAC 90.635(a) and (b), 90.637(a) and (b), 90.639(a) through (c),

and 90.641(a) through (d), concerning assessments of an individual civil penalty against any corporate director, officer, or agent of a corporate permittee who knowingly and willfully authorized, ordered or carried out a violation, failure or refusal, to (1) identify when an individual civil penalty may be assessed, (2) determine the amount of an individual civil penalty, (3) identify procedures for assessment of an individual civil penalty, and (4) identify when payment of the penalty is due.

Petition To Designate Areas Unsuitable for Mining

Revise 11 AAC 90.701(a) to provide that any person having an interest which is or may be adversely affected to have the right to petition the Commissioner to have an area designated as unsuitable for surface coal mining operations, or to have an existing designation terminated, and to state that for the purpose of this action, a person having an interest which is or may be adversely affected must demonstrate how he or she meets an "injury in fact" test by describing the injury to his or her specific affected interests and demonstrate how he or she is among the injured.

Revise 11 AAC 90.701(b) to require that petitions must be filed at the Alaska Department of Natural Resources.

Add 11 AAC 90.701(c)(1) to require that the Commissioner determine what information must be provided by the petitioner to have an area designated as unsuitable for surface coal mining operations and state the minimum requirements for a complete petition.

Add 11 AAC 90.701(c)(2) to state that the Commissioner may request that the petitioner provide other supplementary information which is readily available.

Add 11 AAC 90.701(d)(1) to state that the Commissioner shall determine what information must be provided by the petitioner to terminate designations of lands as unsuitable for surface coal mining operations and to state the minimum requirements for a complete petition for termination.

Add 11 AAC 90.701(d)(2) to state that the Commissioner may request that the petitioner provide other supplementary information which is readily available.

Underground Mining, Subsidence, and Replacement of Water Supplies

Revise 11 AAC 90.085(a)(5), concerning the plan for protection of the hydrologic balance, to add the requirement that the applicant's determination of probable hydrologic consequences include findings on whether the underground mining

activities conducted after October 24, 1992, 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 or adjacent areas.

Revise 11 AAC 90.101(a) and (b) concerning an application for underground mining, to require that the application include a survey that identifies protected water supplies and all structures within the applicable angle of draw, a 1:12,000 scale map, identification of the pre-mining condition of all protected structures and water supplies, a narrative discussing potential impacts, and a subsidence control plan.

Add 11 AAC 90.321(e), concerning the hydrologic balance and drinking, domestic or residential water supplies, to (1) require that the permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the Commissioner received the permit application for the activities causing the loss, contamination or interruption, and (2) state that the baseline hydrologic information required in 11 AAC 90.043–11 AAC 90.051 will be used to determine the impact of mining activities upon the water supply.

Revise 11 AAC 90.461(b), concerning applications for underground mining, to require that the permittee must either (1) adopt measures consistent with known technology that prevent subsidence from causing material damage to the extent technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of surface lands, or (2) adopt mining technology that provides for planned subsidence in a predictable and controlled manner and, in doing so, employ mining technology that provides for planned subsidence in a predictable and controlled manner to minimize material damage to the extent technologically and economically feasible to non-commercial buildings and occupied residential dwellings and structures related thereto, except that measures required to minimize material damage to such structures are not required, if the permittee has the written consent of their owners, or, unless the anticipated damage would constitute a threat to health or safety, the costs of such measures exceed the anticipated costs of repair.

Add 11 AAC 90.461(g), concerning subsidence control, to require that, (1) within a schedule approved by the Commissioner, the operator shall submit a detailed plan of the underground workings, and (2) the detailed plan shall include maps and descriptions, as appropriate, of significant features of the underground mine, including the size, configuration, and approximate location of pillars and entries, extraction ratios, measure taken to prevent or minimize subsidence and related damage, areas of full extraction, and other information required by the Commissioner, and to provide that, upon request of the operator, information submitted with the detailed plan may be held as confidential, in accordance with the requirements of AS 27.21.100(c).

Add 11 AAC 90.461(g)(1) and (2), concerning damage caused by subsidence within the angle of draw, to allow, if damage to any non-commercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land, a rebuttable presumption that the permittee caused the damage, which will apply to a 30-degree angle of draw unless a permittee or permit applicant, based on a site-specific analysis, requests that the presumption apply to an angle of draw different from that established in 11 AAC 90.461(g)(1) (an applicant must demonstrate and the Commissioner must determine in writing that the proposed angle of draw has a more reasonable basis than the standard set forth in 11 AAC 90.461(g)(1), based on a site-specific geotechnical analysis of the potential surface impacts of the mining operation).

Add 11 AAC 90.461(g)(3) and (4) to state that if the permittee was denied access to the land or property for the purpose of conducting the pre-subsidence survey in accordance with 11 AAC 90.101(a), no rebuttable presumption will exist, and that the presumption will be rebutted if, for example, the evidence established that: the damage predated the mining in question, the damage was proximately caused by some other factor or factors and was not proximately caused by subsidence, or the damage occurred outside the surface area within which subsidence was actually caused by the mining in question.

Add 11 AAC 90.461(g)(5) to require, in any determination whether damage to protected structures was caused by subsidence from underground mining,

that all relevant and reasonably available information will be considered by the Commissioner.

Add 11 AAC 90.461(h), to set forth requirements for an additional bond amount, when subsidence-related material damage to land, structures or facilities or facilities protected under (e), or when contamination, diminution, or interruption to a water supply protected under 11 AAC 90.321(e) occurs.

Extraction of Coal Incidental to the Extraction of Other Minerals

Revise 11 AAC 90.901(a)(2), concerning applicability of the Alaska program, to provide an exemption from the program for extraction of coal incidental to the extraction of other minerals if the coal is 16 $\frac{2}{3}$ percent or less of the total tonnage of minerals removed and approved in accordance with 11 AAC 90.650 through 11 AAC 90.657.

Add Article 13, concerning extraction of coal incidental to the extraction of other minerals, to define at 11 AAC 90.650(a) through (e) cumulative measurement period, cumulative production, cumulative revenue, mining area, and other minerals; set forth at 11 AAC 90.651(a) through (e), application requirements and procedures; set forth at 11 AAC 90.652 minimum requirements for the contents of application for exemption; set forth at 11 AAC 90.653(a) through (c), what information submitted must be made available to the public; set forth at 11 AAC 90.654(a) and (b) which requirements must be satisfied in order to qualify for an exemption from the requirements of 11 AAC 90.901; set forth at 11 AAC 90.655(a) through (f), conditions of an exemption if approved and rights of inspection; set forth at 11 AAC 90.656(a) and (b), the ability to stockpile coal qualifying for exemption; set forth at 11 AAC 90.657(a) and (b), revocation and enforcement authority under the Alaska program; and set forth at 11 AAC 90.658(a) and (b), reporting requirements.

Definitions

Revise AAC 90.911 by modifying or adding definitions for "coal mine waste," "collateral bond," "community or institutional building," "cumulative impact area," "drinking, domestic, or residential water supply," "impounding structure," "material damage," "non-commercial building," "occupied residential dwelling and structures related thereto," "other treatment facilities," "previously mined area," "qualified laboratory," "refuse pile," "replacement water supply," "siltation

structure," "thick overburden," and "thin overburden."

Demonstrations

Alaska proposes to demonstrate that the Alaska Dam Safety regulations incorporate the NRCS TR-60 requirements concerning downstream hazard evaluations of impoundments (proposed rule 11 AAC 90.336(f)).

Alaska proposes to demonstrate the necessity for an exemption from topsoil removal where permafrost or cold weather conditions exist in the State of Alaska (proposed rule 11 AAC 90.311(g)).

Alaska proposes to demonstrate that the Commissioner can determine who should approve minimum requirements for shrub stocking and planting arrangements on land where the post mining land use is designated as fish and wildlife habitat, recreation, shelter belts, and forestry (proposed rule 11 AAC 90.457(c)(3)).

Alaska proposes to demonstrate that no prime farmlands exist in the State of Alaska (no associated proposed rule language).

Alaska proposes to demonstrate that the certified statement that all applicable reclamation activities have been accomplished in accordance with the requirements of AS 27.21, 11 AAC 90, and the approved reclamation plan (required from the applicant in the application for each phase of bond release) need not be notarized to be enforceable (proposed rule 11 AAC 90.211(a)).

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Alaska program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (*see Dates*). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Denver Field Division may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: SATS No. AK-006" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Denver Field Division at 303-844-1400 ext. 1424.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.d.t. on August 3, 2004. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to

discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that 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 because each 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 the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to “establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.” Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be “in

accordance with” the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations “consistent with” regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. The rule does not involve or affect Indian Tribes in any way.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the state submittal, which is the subject of this rule, is based upon counterpart federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 902

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 18, 2004.

Allen D. Klein,

Regional Director, Western Regional Coordinating Center.

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