

than continue the treatment of the discharge.

We are seeking comments on appropriate enforcement of the financial assurance requirement for treatment of discharges that occur after mining begins. Specifically:

(1) What enforcement action should be taken in situations where a pollutional discharge develops while mining is still occurring and the permittee is treating the discharge but the bond or other financial assurance is inadequate to ensure treatment of the discharge in the event of forfeiture?

(2) What enforcement action should be taken in situations where a pollutional discharge develops after mining is completed and the permittee is treating the discharge but the bond or other financial assurance is inadequate to ensure treatment in the event of forfeiture?

(3) Should we develop timeframes for bond adjustment (and sanctions for non-adjustment) similar to those of the bond replacement regulations at 30 CFR 800.16?

We welcome your comments on these and other relevant issues on the costs of AMD treatment and forms of financial assurance.

Dated: May 10, 2002.

Rebecca W. Watson,
Assistant Secretary—Land and Minerals
Management.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

[IL-099-FOR]

Illinois 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, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Illinois regulatory program (Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The Illinois Department of Natural Resources, Office of Mines and Minerals (Department or Illinois) is proposing revisions to and additions of regulations about definitions, areas designated by Act of Congress, criteria for designating

areas as unsuitable for surface coal mining operations, requirements for permits and permit processing, coal exploration, and performance bond release. Illinois also proposes to correct or remove outdated references in several regulations. Illinois intends to revise its program to be consistent with the corresponding Federal regulations and to clarify ambiguities.

This document gives the times and locations that the Illinois 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 4:00 p.m., e.s.t., June 17, 2002. If requested, we will hold a public hearing on the amendment on June 11, 2002. We will accept requests to speak at a hearing until 4 p.m., e.s.t. on June 3, 2002.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Andrew R. Gilmore, Director, Indianapolis Field Office, at the address listed below.

You may review copies of the Illinois 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 OSM's Indianapolis Field Office.

Andrew R. Gilmore, Director,
Indianapolis Field Office, Office of
Surface Mining Reclamation and
Enforcement, Minton-Capehart
Federal Building, 575 North
Pennsylvania Street, Room 301,
Indianapolis, Indiana 46204.
Telephone: (317) 226-6700.

Illinois Department of Natural
Resources, Office of Mines and
Minerals, Land Reclamation Division,
300 W. Jefferson Street, Suite 300,
Springfield, Illinois 62701.
Telephone: (217) 782-4970.

FOR FURTHER INFORMATION CONTACT:

Andrew R. Gilmore, Director,
Indianapolis Field Office. Telephone:
(317) 226-6700. Internet:
IFOMAIL@osmre.gov.

SUPPLEMENTARY INFORMATION:

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

I. Background on the Illinois 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 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 Illinois program on June 1, 1982. You can find background information on the Illinois program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Illinois program in the June 1, 1982, **Federal Register** (47 FR 23858). You can also find later actions concerning the Illinois program and program amendments at 30 CFR 913.10, 913.15, 913.16, and 913.17.

II. Description of the Proposed Amendment

By letter dated April 8, 2002 (Administrative Record No. IL-5077), Illinois sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Illinois sent the amendment in response to a letter dated August 23, 2000 (Administrative Record No. IL-5060), that we sent to Illinois in accordance with 30 CFR 732.17(c). Illinois also included some changes at its own initiative. Illinois proposes to amend its surface coal mining and reclamation regulations at Title 62 of the Illinois Administrative Code (IAC). Below is a summary of the changes proposed by Illinois. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

A. 62 IAC 1701 Appendix A Definitions

1. Illinois proposes to delete its definition of “Interagency Committee.” Illinois is removing this definition because Illinois Public Act 90-0490 abolished the Interagency Committee in 1997.

2. Illinois proposes to remove the existing language from its definition of “valid existing rights” and to add a reference to the new definition of “valid existing rights” at 62 IAC 1761.5.

B. 62 IAC Part 1761 Areas Designated by Act of Congress

1. 62 IAC 1761.5 Definition of Valid Existing Rights

Illinois proposes to add a new definition of valid existing rights. At 62 IAC 1761.5(a), the definition requires a person claiming valid existing rights to make a property rights demonstration. The person must demonstrate that a legally binding conveyance, lease, deed, contract, or other document vests that person with the right to conduct surface coal mining operations on lands where mining is normally prohibited or limited. At 62 IAC 1761.5(b), the definition requires a person claiming valid existing rights to demonstrate compliance with either a good faith/all permits standard or a needed for and adjacent standard for lands where mining is normally prohibited or limited. At 62 IAC 1761.5(c), the definition contains requirements for demonstrating the right to use or construct a road across the surface of lands where mining is normally prohibited or limited.

2. 62 IAC 1761.11 Areas Where Mining Is Prohibited or Limited

Illinois proposes to delete existing paragraph (b), which prohibited surface coal mining on specified Federal lands unless called for by Acts of Congress. Illinois also proposes to redesignate paragraphs (a)(1) through (7) as paragraphs (a) through (g), correct citation references, and simplify its use of numbers.

3. 62 IAC 1761.12 Exceptions to Existing Operations

Illinois proposes to remove its existing procedures section and add provisions that address exceptions for existing operations from the prohibitions and limitations of mining on lands where mining is normally prohibited or limited. It describes which operations qualify for these exceptions.

4. 62 IAC 1761.14 Procedures for Relocation or Closing of a Public Road or Waiving the Prohibition on Surface Coal Mining Operations Within the Buffer Zone of a Public Road

Illinois proposes to add this section to address procedures for relocating or closing a public road or waiving the prohibition of mining operations within the buffer zone of a public road.

5. 62 IAC 1761.15 Procedures for Waiving the Prohibition on Surface Coal Mining Operations within the Buffer Zone of an Occupied Dwelling

Illinois proposes to add this section to address procedures for waiving the prohibition of mining operations within the buffer zone of an occupied dwelling.

6. 62 IAC 1761.16 Submission and Processing of Requests for Valid Existing Rights Determinations

Illinois proposes to add this section to address the submission and processing of requests for valid existing rights determinations. It describes the procedures applicants for surface coal mining operation permits must follow when requesting a valid existing rights determination. It also describes the evaluation procedures and decision-making criteria the regulatory authority will follow when making a valid existing rights determination.

7. 62 IAC 1761.17 Department Obligations at Time of Permit Application Review

Illinois proposes to add this section to address the actions it must take upon receipt of an application for a permit for surface coal mining operations. It requires the Department to review the application to determine whether the proposed surface coal mining operation would be located on any lands protected under 62 IAC 1761.11. It includes procedures that the Department must follow when it determines that a proposed surface coal mining operation will adversely affect a publicly owned park or a place listed on the National Register of Historic Places.

C. 62 IAC Part 1762 Criteria for Designating Areas As Unsuitable for Surface Coal Mining Operations

Illinois proposes to redesignate existing section 1762.14 as new section 1762.15 without any changes. Illinois proposes to add the following provision at new section 1762.14:

If the Department determines that the proposed surface coal mining operation is not prohibited under Section 7.01 of the State Act and this Part, it may nevertheless, pursuant to appropriate petitions, designate such lands as unsuitable for all or certain types of surface coal mining operations pursuant to 62 Ill. Adm. Code 1762 or 1764.

D. 62 IAC 1772.12 Permit Requirements for Exploration Removing More Than 250 Tons of Coal

1. Illinois proposes to add a new provision at section 1772.12(b)(14) for coal exploration on lands where mining is prohibited or limited under 62 IAC 1761.11. It requires a demonstration that

the proposed exploration activities have been designed to minimize interference with the activities for which the areas were designated unsuitable for mining.

2. Illinois proposes to add a new provision at section 1772.12(d)(2)(D) to address a finding the Department must make in approving coal exploration on lands where mining is prohibited or limited under 62 IAC 1761.11. The Department must find that the applicant has demonstrated that the exploration and reclamation activities will minimize interference, to the extent technologically and economically feasible, with the values for which the lands were designated as unsuitable for surface coal mining operations. The Department must provide for comment by the landowner or agency with jurisdiction over the protected feature.

E. 62 IAC 1800.40 Requirement To Release Performance Bonds

Illinois proposes to revise section 1800.40(b)(2) to allow the Department, when no public hearing is held, to make its final administrative decision to release or not to release all or part of the performance bond either 60 days after filing or 5 days after the close of the comment period, whichever is later.

F. Miscellaneous Revisions

Illinois proposes to correct citation references and simplify its use of numbers in 62 IAC 1773.13(a)(1)(E), 1773.15(c)(3)(B), 1778.15(e), 1778.16(c), 1780.31(a)(2), 1780.33, 1784.17(a)(2), 1784.18, 1816.116(a)(2)(C), and 1847.9(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 State program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written 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 Indianapolis Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: [IL-099-FOR]" 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 Indianapolis Field Office at (317) 226-6700.

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., e.s.t. on June 3, 2002. 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 a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the 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

In this rule, the State is proposing valid existing rights standards that are similar to the standards in the Federal definition at 30 CFR 761.5. Therefore, this rule has the same takings implications as the Federal valid existing rights rule. The takings implications assessment for the Federal valid existing rights rule appears in Part XXIX.E of the preamble to that rule. See 64 FR 70766, 70822-27, December 17, 1999.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget 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 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 governmental 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 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 12, 2002.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 02-12463 Filed 5-16-02; 8:45 am]

BILLING CODE 4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[OH-247-FOR]

Ohio Regulatory Program

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

ACTION: Notice of withdrawal of proposed amendment.

SUMMARY: We, the Office of Surface Mining (OSM), are announcing the

withdrawal of proposed rule changes to the Ohio regulatory program (the "Ohio program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Ohio proposed to revise its program by amending the definition of "inactive coal mining and reclamation operation" with respect to prime farmland.

DATES: This withdrawal is made on May 17, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. George Rieger, Telephone: (412) 937-2153, Internet address: grieger@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

II. Submission of the Proposed Amendment

I. Background on the Ohio 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 the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the 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 Ohio program on August 16, 1982. You can find background information on the Ohio program, including the Secretary's findings, the disposition of comments, and conditions of approval in the August 10, 1982 **Federal Register** (47 FR 34717). You can also find later actions concerning Ohio's program and program amendments at 30 CFR 935.10, 935.15, and 935.16.

II. Submission of the Proposed Amendment

By letter dated September 13, 2001, Ohio sent us an amendment to its program (Administrative Record Number OH-2181-00) under SMCRA (30 U.S.C. 1201 *et seq.*). Ohio sent the amendment to include the changes made at its own initiative.

The provision of the Ohio Administrative Code (O.A.C.) that Ohio proposed to revise is: O.A.C. 1501:13-14-01, Inspections. Specifically, Ohio proposed to revise the definition of "inactive coal mining and reclamation operation" with respect to prime farmland. Under the State's current rule, "inactive coal mining and reclamation operation" means an operation:

(a) For which the chief has secured from the permittee the written notice required under paragraph (A) of rule 1501:13-9-16 of the Administrative Code;

(b) Conducted under a D-permit, for which reclamation phase II as defined in (B)(1)(b)(I, II, AND IV) of rule 1501:13-7-05 of the Administrative Code has been completed.

The State proposed to add the following language to the end of part (b) of the current rule:

With respect to prime farmland, soil replacement has been carried out in accordance with the requirements of Rule 1501:13-13-03 of the Administrative Code and Division (A)(7) of Section 1513.16 of the Revised Code and sufficient ground cover has been established to prevent erosion or, where row crops are the approved reference crop, the initial planting has occurred.

The effect of the proposed change would have been to reduce the frequency of inspections required for reclaimed areas of prime farmland by classifying such areas as inactive before Phase II reclamation has been completed.

We announced receipt of the proposed amendment in the November 7, 2001 **Federal Register** (66 FR 56263). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record Number OH-2181-03). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on December 7, 2001. We received one comment from the Natural Resources Conservation Service.

In a letter dated February 15, 2002, Ohio notified us that it was withdrawing the proposed amendment from consideration. Because the proposed amendment is not necessary to make the State's program consistent with SMCRA, OSM accepted the withdrawal.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 25, 2002.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 02-12458 Filed 5-16-02; 8:45 am]

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