

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 935

[OH-248-FOR]

#### Ohio 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:** The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the Ohio regulatory program (the "Ohio program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Ohio proposes to revise their regulatory program to reflect changes promulgated by the U.S. Environmental Protection Agency related to coal remining operations. Ohio intends to revise its program to be consistent with the corresponding Federal regulations.

This document gives the times and locations that the Ohio 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., (local time), February 19, 2004. If requested, we will hold a public hearing on the amendment on February 17, 2004. We will accept requests to speak until 4 p.m., local time, on February 4, 2004.

**ADDRESSES:** You should mail or hand deliver written comments and requests to speak at the hearing to Mr. George Rieger, at the address listed below.

You may review copies of the Ohio 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 Appalachian Regional Coordinating Center.

Mr. George Rieger, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, Appalachian Regional Coordinating Center, 3 Parkway Center, Pittsburgh, Pennsylvania 15220, Telephone: (412) 937-2153. E-mail: [grieger@osmre.gov](mailto:grieger@osmre.gov).

Mr. Robert Baker, Division of Mineral Resources Management, Ohio Department of Natural Resources, 1855 Fountain Square Court-Bldg. H-2, Columbus, Ohio 43224, Telephone: (614) 265-1092.

**FOR FURTHER INFORMATION CONTACT:** George Rieger, Telephone: (412) 937-2153. Internet: [grieger@osmre.gov](mailto:grieger@osmre.gov).

#### SUPPLEMENTARY INFORMATION:

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

#### 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 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 of the Ohio program in the August 16, 1982, **Federal Register** (47 FR 34687). You can also find later actions concerning Ohio's program and program amendments at 30 CFR 935.11, 935.15, and 935.16.

#### II. Description of the Proposed Amendment

By letter dated November 7, 2003, Ohio sent us a proposed amendment to its program (Administrative Record No. OH-2184-00) under SMCRA (30 U.S.C. 1201 *et seq.*). Ohio has proposed to revise the Ohio Administrative Code (OAC), Sections 1501:13-4-15 and 1501:13-1-02 relating to coal remining operations and water quality standards so that the Ohio program is consistent with the U.S. Environmental Protection Agency's (EPA) water quality standards relating to coal remining operations. Specific revisions are presented below:

OAC Section 1501:13-4-15, Authorization to conduct coal mining on pollution abatement areas, is amended by adding the following under Section 1501:13-4-15(C)(2)(a), (b) and (c):

(1) If the Chief determines that it is infeasible to collect samples for establishing the baseline pollution load and that remining will result in significant improvement that would not otherwise occur, then the numeric effluent limitations do not apply to the pollution abatement area. Pre-existing discharges for which it is infeasible to collect samples for determination of baseline pollutant levels include, but are not limited to, discharges that exist as a diffuse groundwater flow that cannot be assessed via sample collection; a base flow to a receiving stream that cannot be monitored separate from the receiving stream; a discharge on a steep or hazardous slope that is inaccessible for sample collection; a pre-existing discharge that is too large to adequately assess via sample collection; or a number of pre-existing discharges so extensive that monitoring of individual discharges is infeasible.

(2) If the Chief approves a non-numeric NPDES remining permit the operator shall implement a pollution abatement plan incorporating BMP's designed to reduce the pollutant levels of acidity, iron, manganese, and solids in pre-existing discharges. The monitoring plan will be determined by the Chief. An operator who obtains a non-numeric NPDES remining permit will not be subject to paragraphs (F)(2), (3), (4), (5), (6) and (H)(3)(c) of this section.

(3) TSS [Total Suspended Solids] and SS [Settleable Solids] are exempt during

mining and reclamation, if the Chief determines it is infeasible or impractical based on the site specific conditions of the soil, climate, topography, steep slopes, or other baseline conditions provided that the operator demonstrates that significant reductions of TSS and SS will be achieved through the incorporation of sediment control BMP's into the pollutional abatement plan as required under paragraph (C)(4).

OAC Section 1501:13-4-15(E)(3) which reads "notify the Chief immediately prior to the start and upon completion of each step of the abatement plan; and" has been deleted.

OAC Section 1501:13-4-15(F)(1) is revised as follows:

For any pre-existing discharges from or on the pollutional abatement area, that are commingled with active mining wastewater, the operator shall comply with rule 1501:13-9-04(B) of the Administrative Code, until the pollution abatement plan is implemented and the commingling is ceased.

OAC Section 1501:13-4-5(H)(3)(c) has been revised by the addition of the phrase "the total suspended solids meets the standard NPDES limits" at the end of the provision.

OAC Section 1501:13-1-02. Definitions, include the following revisions:

1. The definition of "acid water" is revised to establish that the standard is "6.5, or a total iron concentration equal to or better than 10 mg/l".

2. The definition of "Best available technology economically achievable" is revised as "for remining operations means implementation of pollution abatement plan that incorporates Best Management Practices (BMP's) designed to improve pH (as acidity) and reduce pollutant loadings of iron, manganese and sediment to the maximum extent possible from or on the pollution abatement area. (1) BMP's are practices implemented during the mining and reclamation of remining sites that area designed to reduce, if not completely eliminate, the pre-existing water pollution problems. BMP's are tailored to specific mining operations based largely on pre-existing site conditions, hydrology, and geology. BMP's are designed to function in a physical and/or geochemical manner to reduce pollution loadings. These BMP measures include engineering, geochemical, daylighting, regrading, revegetation, diversion ditches or other applicable practices."

3. The definition of "Pollution abatement area" is revised to include "areas adjacent to and nearby the remining operation that also must be affected to reduce the pollution load of

the pre-existing discharges and may include the immediate location of pre-existing discharges".

4. The definition of "Pre-existing discharge" is revised to add "This term shall include a pre-existing discharge that is relocated as a result of the implementation of best management practices contained in the abatement plan".

5. The definition of "abatement plan" has been revised by adding a reference to "best management practices" and an example of "daylighting old underground works".

6. The definition of "base line pollution load" has been revised by deleting the reference to "pH" and adding "\* \* \* net acidity, total iron and total manganese, and total suspended solids \* \* \*"

7. The definition of "Chief" has been revised to be the "Chief of the Division of Mineral Resources Management".

### 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 program.

#### Written Comments

Send your written 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 Appalachian Regional Coordinating Center 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. OH-248-FOR," 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 Appalachian Regional Coordinating Center at (412) 937-2153.

#### 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., local time, on February 4, 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. If you are disabled and need a special accommodation to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

#### 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 regulations.

##### *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, to the extent allowable 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 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 basis for this determination is that our decision is on a State regulatory program and does not involve a Federal program involving Indian lands.

##### *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*

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

##### *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 that 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. Accordingly, this rule will ensure that existing requirements previously promulgated 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 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, geographic regions, or Federal, State or local governmental agencies; 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 a cost of \$100 million or more in any given year on any governmental entity or the private sector.

##### **List of Subjects in 30 CFR Part 935**

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 18, 2003.

##### **Brent Wahlquist,**

*Regional Director, Appalachian Regional Coordinating Center.*

[FR Doc. 04-1059 Filed 1-16-04; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 147

[CGD08-03-040]

RIN 1625-AA79

#### **Safety Zone; Outer Continental Shelf Facility in the Gulf of Mexico for Garden Banks 783**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes the establishment of a safety zone around a