

replacement of water supply; subsidence control and subsidence control plans; hydrologic balance; surface owner protection from subsidence; and deep mine bonding requirements. Maryland intended to revise its program to be consistent with Federal rules promulgated by OSM as a result of the Energy Policy Act of 1992.

**EFFECTIVE DATE:** April 29, 2003.

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

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Maryland Program
- II. Submission of the Proposed Amendment
- III. OSM's Findings
- IV. Summary and Disposition of Comments
- V. OSM's Decision
- VI. Procedural Determinations

### **I. Background on the Maryland 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 Maryland program on February 18, 1982. You can find background information on the Maryland program, including the Secretary's findings, the disposition of comments, and conditions of approval in the February 18, 1982, **Federal Register** (47 FR 7214). You can also find later actions concerning Maryland's program and program amendments at 30 CFR 920.12, 920.15 and 920.16.

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

By letter dated October 22, 2002, Maryland sent us an amendment to its program (Administrative Record No. MD-574-05) under SMCRA (30 U.S.C. 1201 *et seq.*). Maryland sent the amendment in response to Federal rules promulgated by OSM as a result of the Energy Policy Act of 1992. The amendment is intended to make the Maryland program consistent with the Federal regulations and to comply with a 30 CFR part 732 issue letter sent to the State dated June 7, 1996 (Administrative Record No. MD-574-00). We announced receipt of the proposed amendment in the January 16, 2003,

**Federal Register** (68 FR 2268). 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. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on February 18, 2003. We did not receive any comments. In response to our own concerns, however, Maryland submitted minor changes to the "material damage" definition and to COMAR 26.20.02.16E, pertaining to presubsidence water supply surveys, on February 24, 2003.

### **III. OSM's Findings**

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes. The full text of the changes can be found in the January 16, 2003, **Federal Register** (68 FR 2268).

Maryland proposed revisions to the following sections of COMAR containing language that is the same as or similar to the corresponding sections of the Federal regulations. Because these proposed rules contain language that is the same as or similar to the corresponding Federal regulations, we find that they are no less effective than the corresponding Federal regulations.

#### **26.20.01.02 Definitions**

Maryland proposed to amend this section by adding definitions for "material damage," and "replacement of water supply." The proposed definitions are substantively identical to the corresponding Federal definitions found at 30 CFR 701.5. Therefore, we are approving the proposed changes.

#### **26.20.02.15 Survey of Structures and Renewable Resources Lands**

Maryland proposed several changes to COMAR 26.20.02.15. As unamended, this section contained structures and renewable resources lands survey requirements. The changes proposed by Maryland make its regulations consistent with and therefore no less effective than the Federal counterpart found at 30 CFR 784.20 by requiring a listing of any water supplies that could be contaminated, diminished, and interrupted, and the quantity and quality of these water supplies, to be incorporated into the survey.

Similarly, the proposed changes also incorporate the Federal requirement that the pre-subsidence survey contain a map of specified scale of the permit and

adjacent areas if determined necessary by the regulatory authority. The proposed changes, like the Federal counterpart, require the map to show the location and type of "structures and renewable resource lands that subsidence may materially damage or for which the value or reasonably foreseeable use may be diminished by subsidence."

Next, the proposed changes require a "narrative indicating whether subsidence, if it occurred, could cause material damage to or diminish the value or reasonably foreseeable use of any structures or renewable resource lands or could contaminate, diminish, or interrupt any water supplies." Because this requirement applies to any water supplies rather than simply drinking, domestic, or residential water supplies, as does the Federal counterpart, it is more stringent than the Federal regulations, and thus is consistent with those regulations, pursuant to section 505(b) of SMCRA, 30 U.S.C. 1255(b). Finally, subdivisions B and C have been recodified as subdivisions C and D, respectively, and have been amended such that they are now substantively identical to 30 CFR 784.20(b), pertaining to subsidence control plans. Therefore, we find that the proposed changes to COMAR 26.20.02.15 are no less effective than the Federal regulations and can be approved.

#### **26.20.02.16 Subsidence Control Plan**

Maryland proposed to amend this section by adding an additional subsidence control plan requirement. Other than the references to Maryland statutory and regulatory provisions, the language of the amendment is identical to the counterpart Federal requirement found at 30 CFR 784.20(b)(8). Further, the State statutory and regulatory provisions referenced in the amendment contain substantively the same requirements as the Federal provisions referenced in 30 CFR 784.20(b)(8), with the following exception. The referenced Maryland water replacement requirement, at COMAR 26.20.13.05D, requires replacement of water supplies used for agricultural and other legitimate purposes, as well as for those purposes for which replacement is required under the Federal regulations. Thus, the State requirement is more stringent. However, as noted above, more stringent state environmental controls and regulations are consistent, as a matter of law, with their Federal counterparts. For all of these reasons, the proposed amendment to COMAR 26.20.02.16E is consistent with its