

conveyance, lease, deed, contract or other document which authorizes the applicant to produce minerals by a surface mining operation. The person proposing to conduct surface mining operations on the lands shall hold current State and Federal permits necessary to conduct the operations on those lands and either have held those permits on August 3, 1977, or had made by that date a complete application for the permits, variances and approvals required by the Department.

(ii) For haul roads, the term includes:

(a) A recorded right-of-way, recorded easement, or a permit for a haul road recorded as of August 3, 1977.

(b) Another road in existence as of August 3, 1977.

(iii) Coal preparation activities, and their associated haul roads, which were not subject to this chapter and Chapters 87–90 prior to August 25, 1989, were in existence on or before July 6, 1984, and were operating in compliance with applicable laws prior to that date.

(iv) Interpretation of the terms of the document relied upon to establish valid existing rights shall be based upon the usage and custom at the time and place where it came into existence, and upon a showing by the applicant that the parties to the document actually contemplated a right to conduct the same underground or surface mining activities for which the applicant claims a valid existing right and that the document has been signed by the surface owner.

(v) The term does not include the mere expectation of a right to conduct surface mining operations or the right to conduct underground coal mining.

Pennsylvania is proposing the following language as its new definition: "Rights which exist under the definition of "valid existing rights" in 30 CFR Section 761.5 (relating to areas unsuitable for mining)." Pennsylvania stated in the Pennsylvania Bulletin (Pa. Bull.) that this "change will conform the Commonwealth's regulations to the [Pennsylvania] statutes [52 P.S. 1396.4e, 52 P.S. 30.56a, and 35 P.S. 691.315] and will make it unnecessary for the Commonwealth to change its definition if the Federal definition is changed." 29 Pa. Bull. 5289, 5292 (October 9, 1999). Accordingly, we find that since Pennsylvania is effectively incorporating OSM's definition of valid existing rights and will change its implementation of its definition if the Federal definition should change, the Pennsylvania definition is no less effective than the Federal regulation at 30 CFR 761.5.

#### 25 Pa. Code 86.124(a)(2).

Pennsylvania amended this section by adding the sentence, "A frivolous petition is one in which the allegations of harm lack serious merit." This language is identical to the language describing a frivolous petition in the Federal regulations at 30 CFR

764.15(a)(3). Because the language is the same as in the Federal regulations, we find it no less effective and we are approving it.

25 Pa. Code 86.129. This section provides the requirements for conducting coal exploration on areas designated as unsuitable for surface mining operations. The section will allow coal exploration on areas designated as unsuitable for surface mining operations if the following provisions of subsections (b)(1) and (2) are met:

\* \* \* \* \*

(b) Coal exploration may be conducted on an area designated as unsuitable for surface mining operations in accordance with this chapter if the following apply:

(1) The exploration is consistent with the designation.

(2) The exploration will be conducted to preserve and protect the applicable values and uses of the area under Subchapter E (relating to coal exploration) and the Department has issued written approval for the exploration.

\* \* \* \* \*

In amending this section, Pennsylvania dropped a requirement in subsection (b)(2) that it would not grant approval for coal exploration unless the person seeking the approval has described the nature and extent of the proposed operation, and has described in detail the measures to be employed to prevent adverse effects. Even though Pennsylvania dropped this requirement, 25 Pa. Code 86.129 remains no less effective than the corresponding Federal regulation at 30 CFR 762.15 because of its reference to 25 Pa. Code Subchapter E. Under Subchapter E, 25 Pa. Code 86.133(f) provides that:

\* \* \* \* \*

(f) Coal exploration on lands where a petition to declare an area unsuitable for mining has been received by the Department or on lands designated unsuitable for mining shall be conducted only after written approval is granted by the Department. The Department may prescribe conditions and requirements necessary to preserve the values sought to be protected in the petition before approving coal exploration in these areas. The exploration activities shall be conducted in accordance with § 86.129 (relating to coal exploration) to insure that the exploration activity does not interfere with a value for which the area has been designated unsuitable for mining.

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Taken together, the provisions of 25 Pa. Code 86.133(f) and 25 Pa. Code 86.129 provide the same level of protection as the Federal regulations at 30 CFR 762.15 regarding coal exploration on lands unsuitable for surface coal mining. The Federal

regulations require approval under the State's equivalent to the Federal coal exploration regulations at 30 CFR part 772 to ensure that the exploration does not interfere with any value for which the area has been designated unsuitable for surface coal mining. We find it no less effective than the Federal rule and we are approving the change to this section.

#### C. Revisions to Pennsylvania's Rules That Are Not the Same as the Corresponding Provision of the Federal Regulations

25 Pa. Code 86.101 Definitions. The definition of "surface mining operations" has been modified by deleting the following phrase at the end of the definition: "\* \* \* and activities involved in or related to underground coal mining which are conducted on the surface of the land, produce changes in the land surface, or disturbs the surface, air or water resources of the area." The definition now reads:

The extraction of coal from the earth or from waste or stock piles or from pits or banks by removing the strata or material which overlies or is above or between them or otherwise exposing and retrieving them from the surface, including, but not limited to, strip and auger mining, dredging, quarrying and leaching and surface activity connected with surface or underground coal mining, including, but not limited to, exploration, site preparation, entry, tunnel, slope, drift, shaft and borehole drilling and construction and activities related thereto, coal refuse disposal, coal processing and preparation facilities.

This definition only applies to subchapter D of 25 Pa. Code Chapter 86 and was revised to eliminate the inconsistency between Pennsylvania's definition and our interpretative rulemaking on activities applicable to section 522(e) of SMCRA. 29 Pa. Bull. 5289, 5290 (October 9, 1999). Our interpretative rule found at 30 CFR 761.200(a) states "[s]ubsidence due to underground coal mining is not included in the definition of surface coal mining operations under section 701(28) of the Act and 700.5 of this chapter and therefore is not prohibited in areas protected under section 522(e) of the Act." In the preamble to the interpretative rule we noted that "we interpret the definition of "surface coal mining operations" at SMCRA section 701(28)(A) and in the analogous portion of the existing rules at 30 CFR 700.5 not to include subsidence, and to include only: (1) Activities on the surface of lands in connection with a surface coal mine; and (2) Activities subject to section 516, conducted on the surface of lands in connection with surface