

to the petitioner, intervenors and by regular mail to all other persons involved in the proceeding. OSM was concerned that Pennsylvania's regulation failed to provide notification of the decision by regular mail to all other persons involved in the proceeding. In a letter dated February 13, 2002 (Administrative Record No. PA 861.10), Pennsylvania noted that the Pennsylvania Regulatory Review Act (71 P.S. 745.1 *et seq.*) required notification to all interested parties. *See*, 71 P.S. 745.5a. Accordingly, we find that the inclusion of this information does not make Pennsylvania's program inconsistent with the Federal regulations at 30 CFR 764.19(b) and we are approving it.

D. Revisions to Pennsylvania's Rules With No Corresponding Federal Regulations

25 Pa. Code 86.102(4). Subsection (4) was modified by inserting the phrase, "the Department of Conservation and Natural Resources and" before the words, "the Department." The section now reads: "On lands within the State park system. Surface mining activities may be permitted if the Department of Conservation and Natural Resources and the Department find that significant land and water conservation benefits will result when remining of previously mined land is proposed."

The Department of Conservation and Natural Resources is now included in the decision on whether mining will be prohibited on certain State lands. There is no Federal counterpart to this subsection. We find that this addition does not make this rule inconsistent with the Federal regulations.

25 Pa. Code 86.102(5) was modified by inserting the, " * * * Department of Conservation and Natural Resources and the * * * " before the word, "Department." This section now reads:

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(5) On lands within State forest picnic areas, State forest natural areas and State forest wild areas. Surface mining operations may be permitted on State forestlands other than picnic areas, natural areas and wild areas, if the Department of Conservation and Natural Resources and the Department find that one or more of the following apply:

(i) There will be no significant adverse impact to natural resources, including timber, water, wildlife, recreational and aesthetic values.

(ii) Significant land and water conservation benefits will result when remining of previously mined lands is proposed.

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The Department of Conservation and Natural Resources is now included in the decision on whether mining will be

prohibited on certain State lands. There is no Federal counterpart to this subsection. We find that this addition does not make this rule inconsistent with the Federal regulations.

25 Pa. Code 86.130 *Areas designated as unsuitable for mining.* Pennsylvania corrected two regulatory references in this section by adding the description of that reference.

Section 86.130 is the section where Pennsylvania publishes the results of EQB's decisions designating areas as unsuitable for all or certain types of surface mining operations. There are no comparable provisions in the Federal regulations requiring publication of the designations. Publication will insure that the designations are available for all interested persons to review. As a result, we find that this section is not inconsistent with the Federal regulations and we are approving it.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record No. PA 861.03), but we did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Pennsylvania program (Administrative Record No. PA 861.04). The Department of Labor, Mine Safety and Health Administration (MSHA), New Stanton Office, provided comments by letter dated December 17, 1999 (Administrative Record No. PA 861.07). The comments included one substantive comment that requested changing the reference in the Federal regulations to the definition of "Valid Existing Rights" (VER) to actually insert the language redefining VER.

We have considered this comment and believe that requiring Pennsylvania to delete the reference to 30 CFR and inserting the language does not have any effect on the proposed revision to the Pennsylvania program. Therefore, we will not request Pennsylvania to change this reference.

By letter dated December 6, 1999, (Administrative Record No. PA 861.05) MSHA's Wilkes-Barre office, stated that nothing conflicted with existing MSHA regulations.

Environmental Protection Agency (EPA) Comments

Under 30 CFR 732.17(h)(11)(i) we requested comments on the amendment from EPA (Administrative Record No.

PA 861.04). EPA responded on December 15, 1999, that the amendments appeared to comply with the Clean Water Act (Administrative Record No. PA 861.06).

The Pennsylvania Historical and Museum Commission (PHMC)

PHMC submitted comments by letter dated February 26, 1999 (Administrative Record No. PA 861.01) with a follow up letter dated December 7, 1999 (Administrative Record No. PA 861.09) resubmitting their earlier comments. The comments submitted include:

1. The proposed change in the definition of a completed application at 25 Pa. Code 86.1 weakens Pennsylvania's requirements by only requiring an applicant for a permit application to complete forms addressing each requirement of the application instead of "demonstrating compliance with applicable statutes and regulations."

We have determined that the comment addresses an issue that is not in this program amendment. Since it is outside the scope of the amendment, we are not required to address this comment.

2. The revision to the definition of valid existing rights in 25 Pa. Code 86.1 deletes nearly all descriptions of what are valid rights for people and agencies and replaces them with a line indicating that valid existing rights are rights which exist under the definition of valid existing rights in 30 CFR 761.5. PHMC wants to retain the old definition, or repeat verbatim, the Federal definition so the rights of the people or agencies are clear.

PHMC is correct in noting the change. However, OSM's standard for review of amendments to State program regulations are whether the regulations are no less effective than the corresponding Federal regulations in meeting the requirements of SMCRA (see 30 CFR 730.5). Pennsylvania's inclusion of the reference to the Federal regulations in the definition of valid existing rights makes it no less effective than the Federal regulations because it now includes all rights as protected by Federal regulation.

3. The change to the definition of fragile lands in 25 Pa. Code 86.101 adds the stipulation that the damage to these properties be significant. This is inconsistent with Federal Section 106 statutes, which applies when there is an impact to cultural resources. Also the deletion of language that provides protection to buffer areas surrounding fragile lands is unacceptable.

As with Pennsylvania's change to the definition of valid existing rights, the