

EFFECTIVE DATE: July 17, 2003.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

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1. Background on the Kentucky 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 Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval in the May 18, 1982, **Federal Register** (47 FR 21404). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16 and 917.17.

2. Submission of the Proposed Amendment

By letter dated July 30, 1997 (administrative record no. KY-1410), Kentucky sent us a proposed amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The amendment revises 405 KAR at sections 8:001, 8:030, 8:040, 16:001, 16:060,

16:090, 16:100, 16:160, 18:001, 18:060, 18:090, 18:100, 18:160, and 18:210.

We announced receipt of the proposed amendment in the September 5, 1997, **Federal Register** (62 FR 46933), and in the same document invited public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on October 6, 1997. On November 14, 1997, a Statement of Consideration of public comments was filed with the Kentucky Legislative Research Committee. As a result of the comments and by letter dated March 4, 1998, Kentucky made changes to the original submission (administrative record no. KY-1422). The revisions were made at 405 KAR 8:040, 16:060, 18:060, and 18:210. By letter dated March 16, 1998, Kentucky made additional changes to the original submission (administrative record no. KY-1423). The revisions were made at 8:001, 8:030, 8:040, 16:001, 16:060, 16:090, 16:100, 16:160, 18:001, 18:060, 18:090, 18:100, 18:160, and 18:210. By letter dated July 14, 1998, Kentucky submitted a revised version of the proposed amendments (administrative record no. KY-1431). All the revisions, except for a portion of those submitted March 16, 1998, were announced in the August 26, 1998, **Federal Register** (63 FR 45430).

During our review of the amendment, we identified concerns relating to the provisions at 405 KAR 8:001, 8:030, 8:040, 16:001, 16:060, 16:090, 16:100, 16:160, 18:001, 18:060, 18:090, 18:100, 18:160, and 18:210. We notified Kentucky of the concerns by letter dated May 26, 2000 (administrative record no. KY-1479). Kentucky responded in a letter dated August 10, 2000, and submitted additional explanatory information (administrative record no. KY-1489). The explanatory information and those revisions not included in previous notices were announced in the June 5, 2002, **Federal Register** (67 FR 38621).

By letter dated June 25, 2002 (administrative record no. KY-1544),

Kentucky sent us a proposed change to 405 KAR 16/18:090, by adding section 6, which established performance standards for "other treatment facilities." We announced this proposed revision in the August 16, 2002, **Federal Register** (67 FR 53540). In a letter dated October 30, 2002 (administrative record no. KY-1568), Kentucky sent us a final version of 405 KAR 16/18:090 section 6 as well as non-substantive changes to 405 KAR 6/18:090 section 1(1), (2)(a) and (4); section 2; section 4 and section 5(2).

We addressed Kentucky's revisions to its subsidence control regulations at 405 KAR 18:210 in a **Federal Register** notice published on May 7, 2002 (67 FR 30549). In this rule, we will address only those revisions at 405 KAR 8/16/18:001 definitions of "impounding structure," "impoundment," and "other treatment facilities," 16/18:090 sections 1 through 5, 16/18:100, and 16/18:160 pertaining to sedimentation ponds and impoundments. The minor revisions to 16/18:090 submitted by Kentucky on October 30, 2002, will not be discussed in this rule. The October 30, 2002, revisions and any other remaining revisions to the Kentucky regulations not previously addressed, will be in a future **Federal Register** notice (KY-216) or in a recently approved notice (KY-241).

3. 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 with the exception of one provision. Also, we are removing a required amendment at 30 CFR 917.16(d)(4). Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes.

(a) Minor Revisions to Kentucky's Rules

Kentucky proposed minor wording, editorial, punctuation, grammatical, and recodification changes to the following previously-approved rules.

| State rule | Subject | Federal counterpart |
|---|---------------------------|-----------------------------|
| 405 KAR 16:090 section 5(7)/18:090 section 5(8) | Sedimentation Ponds | 30 CFR 816/817.46 |
| 405 KAR 16/18:100 section 2(1) | Impoundments | 30 CFR 816/ 817.49(b)(1) |
| 405 KAR 16/18:160 section 3(1), 3(1)(e) | Impoundments | 30 CFR 816/817.84 |