

Because the changes are minor, we find that they will not make Kentucky's rules less effective than the corresponding Federal regulations.

(b) Revisions to Kentucky's Rules That Have the Same Meaning as the Corresponding Provisions 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.

Kentucky proposed revisions to the following rules containing language that is the same as or similar to the corresponding sections of the Federal regulations.

State rule	Subject	Federal counterpart
405 KAR 8:001/16:001 section 1 (50)/18:001 section 1 (52)	Impounding Structure	30 CFR 701.5
405 KAR 8:001/16:001 section 1 (51)/18:001 section 1 (53)	Impoundment	30 CFR 701.5
405 KAR 16:001 section 1 (69)/18:001 section 1 (72)	Other Treatment Facilities	30 CFR 701.5
405 KAR 16/18:160 section 3(1) (a)	Coal Mine Waste Impoundments	30 CFR 816/ 817.84(b)(2)
405 KAR 16/section 3(3) 18:160	Coal Mine Waste Impoundments	30 CFR 816/ 817.84(e)
405 KAR 16/18:160 section 4	Coal Mine Waste Impoundments	30 CFR 816/ 817.84(f)

(c) Revisions to Kentucky's Rules That Are Not the Same as the Corresponding Provisions of the Federal Regulations

1. 405 KAR 16/18:090. At section 1, subsections (1) through (3), Kentucky is requiring that sedimentation ponds comply with its impoundment regulations at 405 KAR 16/18:100. We find that Kentucky's proposed regulations are no less effective than the Federal regulations at 30 CFR 816/817.46(b)(4), which require the compliance with the impoundment regulations at 30 CFR 816/817.49 since sections 405 KAR 16/18:100 are Kentucky's counterpart to the Federal regulations at 30 CFR 816/817.49. Additionally, Kentucky requires that sedimentation ponds must be designed and certified by a qualified registered professional engineer as meeting Kentucky's sedimentation ponds and impoundment requirements; and be inspected during construction by or under the direct supervision of the responsible registered professional engineer, and after construction be certified by the engineer as having been constructed in accordance with the approved design plans. The sedimentation pond must also be constructed and certified before any disturbance in the watershed that drains into the sedimentation pond. Kentucky is deleting the requirements at former subsections (3) and (4) that sedimentation ponds meet the criteria of these regulations and that they be removed unless approved for retention. These requirements can be found at revised sections 1(1) and 5(6), respectively. While Kentucky requires the construction of the sedimentation ponds before any disturbance in the watershed that drains into the sedimentation pond and the Federal rule requires construction before any

surface mining activities are conducted, both rules serve the same purpose to ensure that "any mining activities in a new drainage area" will have in place adequate siltation structures. 48 FR 44032-44037 (September 26, 1983) (emphasis added). Accordingly, we find that Kentucky's proposed regulations are no less effective than the Federal regulations at 30 CFR 816/817.46(b)(3) and (4), which require that siltation structures be constructed before beginning any surface mining activities in that area and be designed, certified, constructed, and maintained as approved in the reclamation plan.

At section 2, Kentucky is requiring that plans for clean-out operations include a time schedule or clean-out elevations, or an appropriate combination thereof, that provides periodic sediment removal sufficient to maintain adequate volume for the sediment to be collected during the design precipitation under section 3. This language replaces a requirement that sediment storage volume be the anticipated volume of sediment that will be collected by the pond between scheduled clean-out operations. The Federal rules at 816/817.46(c)(1)(iii)(F) require periodic sediment removal sufficient to maintain adequate volume for the design precipitation event. Thus, the only difference between Kentucky's proposed language and the Federal rules is that Kentucky allows the permittee to choose between alternative methods to maintain adequate sediment storage volume. Since the permittee must maintain adequate volume, we find that Kentucky's proposed regulations are no less effective than the Federal regulations at 30 CFR 816/817.46(c)(1)(iii)(F).

At section 3, Kentucky is adding requirements that sedimentation ponds

be designed, constructed, and maintained to: (1) contain the runoff from the 10-year, 24-hour precipitation event by providing a runoff storage volume, between the top elevation of the design sediment storage volume and the principal spillway elevation, equal to or greater than the runoff from that precipitation event. Kentucky may approve a smaller runoff storage volume based on the terrain, the amount of disturbance, other site-specific conditions, and a demonstration by the permittee that effluent limitations will be met; or (2) treat runoff from the 10-year, 24-hour precipitation event by using other treatment facilities in conjunction with adequate runoff storage volume so that effluent limitations will be met. The proposed revisions clarify that sedimentation ponds must meet the requirements at subsections (1) and (2) in order to provide detention time for the runoff from a precipitation event. The detention is necessary so the effluent limits for the water leaving the permit area can be met. We find that Kentucky's proposed regulations are no less effective than the Federal regulations at 30 CFR 816/817.46(c)(1)(iii)(B) and (C), which require that sedimentation ponds provide adequate detention time to allow the effluent from ponds to meet State and Federal effluent limitations, and contain or treat the 10-year, 24-hour precipitation event unless a lesser event is approved by the State.

At section 4, Kentucky is revising its dewatering regulations that pertain to dewatering devices or spillways. They cannot be located at a lower elevation than the top elevation of the design sediment storage volume. The Federal regulations at 30 CFR 816/817.46(c)(1)(iii)(D) require that