

nonclogging dewatering devices be adequate to maintain specified detention times. Kentucky's proposed regulations at 405 KAR 16/18:090 section 3(1) address detention times and reference effluent limitations at 405 KAR 16/18:070. Therefore, we find that Kentucky's proposed regulations at 405 KAR 16/18:090 section 4, when read in conjunction with 405 KAR 16/18:090 section 3(1) and 405 KAR 16/18:070, are no less effective than the Federal regulations.

At section 5, Kentucky is deleting its existing regulations pertaining to sedimentation ponds at subsections (3)-(16) and (20). The remaining sections have been renumbered. In its letter dated August 10, 2000, Kentucky noted that the revisions described above were made because the same requirements appear at 405 KAR 16/18:100. We find that Kentucky's proposed deletions at 16/18:090 section 5, when read in conjunction with revised 405 KAR 16/18:090 and 16/18:100, are no less effective than the Federal regulations at 30 CFR 816/817.46 and 816/817.49. Additionally, at subsections (4) and (5), Kentucky is adding requirements that sediment be removed in accordance with the approved clean-out plan and that spillways be provided in accordance with 405 KAR 16/18:100. We find these additions are consistent with changes that we are approving and are no less effective than the Federal rules at 30 CFR 816/817.46(c).

2. *405 KAR 16/18:100.* At section 1, subsection (1)(a), Kentucky is referencing compliance with permit application requirements as they pertain to the submission of the Mine Safety and Health Administration (MSHA)-approved impoundment plans. At section 1, subsections (3)(a) 1, Kentucky is now adding Class B and C impoundments to its performance standard that requires Class B and C impoundments, as well as other impoundments, to have a minimum static safety factor of 1.5 and a seismic safety factor of 1.2. The Federal rules at 30 CFR 816/817.49(a)(4) also require impoundments meeting the Class B or C criteria found in the Soil Conservation Service's (SCS) (now known as the Natural Resources Conservation Service) Technical Release No. 60 (TR-60) to meet a minimum static safety factor of 1.5 and a seismic safety factor of 1.2. However, Kentucky does not refer to TR-60 with regard to its Class B and C impoundments. In its letter dated August 10, 2000, Kentucky stated its Class B and C criteria (at 405 KAR 7:040 section 5 and 401 KAR 4:030) and those of TR-60 are virtually identical. Further, Kentucky stated that its criteria were

developed based on the SCS criteria, making a reference to TR-60 unnecessary. Kentucky's criteria are substantively identical to the TR-60 criteria. Therefore, based on the criteria found in Kentucky's regulations, we find that Kentucky's proposed regulations are no less effective than the Federal regulations, if Kentucky does not change its reference criteria at 405 KAR 7:040 section 5 and 401 KAR 4:030. We are also removing the required amendment at 30 CFR 917.16(d)(4), which directed Kentucky to require that all C class impoundments have a minimum static safety factor of 1.5 and all other impoundments have a minimum static safety factor of 1.3 or meet specific design criteria no less effective than the standard. Kentucky is also adding a requirement that all impoundments not included in subsection (3)(a) 1, except coal mine waste impoundments, shall have a minimum static safety factor of 1.3 for the normal pool with steady state seepage saturation conditions. This language is substantively identical to and no less effective than the Federal rules at 30 CFR 816/817.49(a)(4)(ii).

At section 1, subsections (5)(a) 2, Kentucky is now adding Class B and C impoundments to its performance standard that requires Class B and C impoundments, as well as other impoundments to have foundation investigations. This is substantively identical to and no less effective than the Federal rules at 30 CFR 816/817.49(a)(6).

At section 1(6), Kentucky is requiring that a 24-hour event may be used in lieu of a 6-hour event for the duration of a design precipitation event specified in subsection (6). OSM previously evaluated this issue for the design of spillways. In an OSM memorandum dated March 15, 1990, the results of a computer modeling analysis done for various types of watershed configurations typical to the coal fields of Kentucky were summarized (administrative record no. KY-1581). The computer modeling indicated the peak discharge for a 24-hour duration precipitation event was higher than the peak discharge for a 6-hour event having the same return period and would require a larger spillway than the 6-hour event. The proposed language is no less effective than the Federal regulations at 30 CFR 816/817.49(a)(9)(ii). At subsections (6)(a)1 and 2, Kentucky is requiring that Class A structures not meeting MSHA criteria pass: a 25-year, 6-hour precipitation event if it is a temporary structure; a 50-year, 6-hour precipitation event if it is a permanent structure; or a 100-year, 6-hour event if

it does meet the MSHA criteria. We find that Kentucky's proposed regulations are no less effective than the Federal regulations at 30 CFR 816/817.49(a)(9)(ii)(C), which require a 25-year, 6-hour standard or greater as specified by the regulatory authority.

Kentucky is proposing two changes allowing exemptions from impoundment inspection/examination requirements. First, at subsection (9)(c), Kentucky is proposing to allow an exemption from the engineer inspection requirements of subsection (9) for an impoundment with no embankment structure, that is completely incised or is created by a depression left by backfilling and grading, that is not a sedimentation pond or coal mine waste impoundment and is not otherwise intended to facilitate active mining. If Kentucky determines, on a case-by-case basis that an engineering inspection and certification are necessary to ensure public health and safety or environmental conditions, it will establish appropriate inspection and certification requirements for the impoundment that will apply in lieu of the requirements of subsection (9) and will notify the permittee in writing.

This proposal constitutes a limited exemption from the State counterpart to the Federal regulations at 30 CFR 816/817.49(a)(11), which require that all impoundments be inspected by an engineer during construction, upon completion of construction and thereafter at least yearly. Following each inspection, a certified report shall be provided to the regulatory authority.

Second, Kentucky is proposing, at subsection (10)(b), to allow an exemption for impoundments not meeting the MSHA requirements of 30 CFR 77.216 or not meeting the Class B and C classifications, from qualified person examination requirements specified in subsection 10(b) for an impoundment with no embankment structure, that is completely incised, or is created by a depression left by backfilling and grading. This proposal constitutes an exemption from the State counterpart to the Federal regulations at 30 CFR 816/817.49(a)(12), which require that all impoundments not meeting the SCS Class B or C criteria or the criteria of 30 CFR 77.216-3, shall be examined quarterly.

The Federal regulations regarding inspection/examination of impoundments were adopted in 1979 and revised and strengthened in 1983 for the express purpose of identifying structural weakness, instability, or other hazardous conditions so that potential hazards might be addressed and emergency procedures implemented in