

Montana Code Annotated (MCA) 82-4-205 (recodification) and (1) Administration by department.

MCA 82-4-241(1) Receipts paid into general fund.

MCA 82-4-254 (3, last sentence), (4) Violation, penalty, waiver.

Because these changes are minor, we find that they will not make Montana's rules or statutes less effective than the corresponding Federal regulations or less stringent than SMCRA. We approve the proposed revisions.

*B. Revisions to Montana's Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations*

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

ARM 17.24.301(34) (30 CFR 701.5), Definition of "domestic water supply."

ARM 17.24.301(39) (30 CFR 701.5), Definition of "excess spoil."

ARM 17.24.301(64) (30 CFR 701.5), Definition of "material damage."

ARM 17.24.301(71) (30 CFR 701.5), Definition of "non-commercial building."

ARM 17.24.301(73) (30 CFR 701.5), Definition of "occupied residential dwelling."

ARM 17.24.301(76) (30 CFR 701.5), Definition of "other treatment facilities."

ARM 17.24.301(103) (30 CFR 701.5), Definition of "replace adversely affected domestic water supply."

ARM 17.24.301(110) (30 CFR 701.5), Definition of "soil horizon."

ARM 17.24.304(5) (30 CFR 780.21(c)(1)/784.14(c)(1)), Baseline information; environmental resources.

ARM 17.24.315(1)(b) (30 CFR 780.25(a)(2), (f)/784.16(a)(2), (f)), Plan for ponds and embankments.

ARM 17.24.324(2), (3) (30 CFR 785.17(d), (e)), Prime farmlands, application requirements.

ARM 17.24.505(2) (30 CFR 816/817.102(f)), Burial and treatment of waste materials.

ARM 17.24.639(7)(b), (c) (30 CFR 816/817.49(c)(2)), Sediment ponds, containment requirements.

ARM 17.24.639(8) (30 CFR 816/817.49(a)(6)(i)); 17.24.639(14) (30 CFR 816/817.46(c)(1)(iii)(H)); and 17.24.639(16) (30 CFR 816/817.49(a)(4)) Sediment ponds, foundation stability and embankment stability.

ARM 17.24.639(17) (30 CFR 816/817.49(a)(3)), Sediment ponds, design standards.

ARM 17.24.639(21) (30 CFR 816/817.49(a)(5), (a)(9)(ii)(A)), Sediment ponds, freeboard and spillway capacity.

ARM 17.24.639(23) (30 CFR 816/817.49(a)(12)), Sediment ponds, inspections.

ARM 17.24.642(6) (30 CFR 816/817.49(a)(12)), Permanent and temporary impoundments, inspections.

ARM 17.24.725(1) (30 CFR 816/817.116(c)(3)(i)), Period of responsibility.

ARM 17.24.726(2) (30 CFR 816/817.111), Vegetation production, etc.

ARM 17.24.728 (30 CFR 816/817.111), Composition of vegetation.

ARM 17.24.815(2)(f)(i) (30 CFR 823.15(b)(3)), Prime Farmlands, revegetation.

ARM 17.24.823(2) (30 CFR 785.17(d)), Alternate reclamation; approval of plan.

ARM 17.24.826 [replaces 17.24.1103] (30 CFR 816.111(d), 816.116(c)(3)), Alternate reclamation; period of responsibility.

ARM 17.24.1002 (30 CFR 772.10 & 772.12), Prospecting, information & monthly reports.

ARM 17.24.1003 (30 CFR 774.15 & 774.17), Prospecting, renewal & transfer of permits.

ARM 17.24.1014(4) (30 CFR 772.12 & 772.14), Prospecting test pits, application requirements, etc.

ARM 17.24.1104 (30 CFR 817.121(c)(5)), Bonding; adjustment of amount.

ARM 17.24.1111 (30 CFR 800.40(a)(3)), Bonding; bond release application.

ARM 17.24.1221 (30 CFR 795.3), Small operator assistance program (SOAP), program services.

ARM 17.24.1222 (30 CFR 795.6), SOAP, eligibility.

ARM 17.24.1223 (30 CFR 795.7), SOAP, filing for assistance.

ARM 17.24.1224 (30 CFR 795.8), SOAP, application approval.

ARM 17.24.1225 (30 CFR 795.9), SOAP, data requirements.

ARM 17.24.1226 (30 CFR 795.10), SOAP, qualification of laboratories & consultants.

ARM 17.24.1228 (30 CFR 795.12), SOAP, applicant liability.

ARM 17.24.1261 (30 CFR 850.15), Certification of blasters.

ARM 17.24.1262 (30 CFR 850.13), Blaster training courses.

MCA 82-4-254(3) (SMCRA 518(b)), Violation penalty and hearing.

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. We approve the proposed revisions.

*C. Revisions to Montana's Rules and Statutes That Are Not the Same as the Corresponding Provisions of the Federal Regulations and Statutes*

C.1. ARM 17.24.301(13) Definition of "Approximate original contour" (SMCRA Sec. 701(2) & 30 CFR 701.5)

Montana proposed to revise its definition of "approximate original contour" to: (1) Eliminate the phrase which includes terracing or access roads in the reclaimed area; (2) change "refuse" to "waste;" (3) add the requirement that depressions, except as provided at ARM 17.25.503(1), are eliminated; and (4) eliminate the statement which reads "Permanent water impoundments may be permitted

where the department determines that they are in compliance with ARM 17.24.504."

The Federal statute at SMCRA Sec. 701(2) and the Federal regulation at 30 CFR 701.5 include the phrase concerning terracing or access roads in the reclaimed area. The Federal regulations use the term "coal refuse piles." The Federal statute and regulations do not specify the elimination of depressions. The Federal regulatory definition of "approximate original contour" (AOC) contains the phrase concerning the option of permitting of permanent water impoundments; SMCRA does not.

Montana states that it does not need to specify terracing or access roads as part of the reclaimed area, as elsewhere in the State program (ARM 17.24.501 and 17.24.501A), all affected areas must be graded to AOC. The reclamation and grading of roads to be returned to AOC is specifically addressed at ARM 17.24.605 in the Montana program. Both the Federal statute and regulations address grading to achieve AOC for the reclamation of disturbed areas and roads (30 CFR 816.102/817.102; 816.150(b), (c), & (f)/817.150(b), (c), & (f); and Sec. 515(b)(3) of SMCRA), in addition to the definition of AOC. The preamble does not address the need or reason to repeat this reclamation guidance in both sections. Therefore, because Montana contains the requirement to regrade and reclaim all disturbed areas to AOC elsewhere in the State program other than the definition of AOC, OSM finds the Montana proposal to be no less effective than the Federal regulations and no less stringent than SMCRA.

Concerning use of the term "waste" instead of "refuse," Montana stated that "waste" is defined in the state program whereas "refuse" is not. Some States prefer to use the term "waste" instead of "refuse," with New Mexico's program as an example. Because Montana has chosen to use and define the term "waste" instead of "refuse," OSM approves Montana's revision as being no less effective than the Federal regulations.

Montana proposed to add the statement that depressions, except as provided in ARM 17.24.503(1), be eliminated. This requirement is not contained in the Federal definition of AOC but rather at 30 CFR 816.102(h). Montana also contains this requirement in its program at ARM 17.24.503. OSM finds no conflict with also including this requirement in the definition of AOC. OSM finds the Montana proposal to be no less effective than the Federal regulations.