

Montana proposed to eliminate the phrase concerning the option of permitting permanent water impoundments if they are in compliance with ARM 17.24.504. This phrase is not an integral part of the definition of AOC and is only contained in the Federal regulatory definition of AOC, not in SMCRA. The preamble does not require this phrase for the definition of AOC. Both 30 CFR 816.49(b)/817.49(b) and ARM 17.24.504 allow permanent impoundments in reclaimed areas providing certain conditions are met. Therefore, OSM finds this revision to be no less effective than the Federal regulations.

C.2. ARM 17.24.301(47), (133) Definition of "Head of Hollow Fill" and "Valley Fill" (30 CFR 701.5)

Montana did not propose any revisions to these definitions. However, in the narrative included in the submittal, Montana addressed a required program amendment at 30 CFR 926.16(e)(9) that was imposed in a final rule dated August 19, 1992 (57 FR 37436). The amendment required Montana to delete the modifier "non-coal" from the organic materials prohibited in these fills. Under the Federal definitions, these fills may consist of "any material, other than organic material." The Montana definitions allow "any material other than non-coal organic material."

In its narrative, Montana stated that under its definitions, the same materials are allowed, and excluded, as under the Federal definitions. It references earlier arguments in a letter to OSM dated February 19, 1993. The differences in the Montana and OSM positions on this issue stem from whether the terms "coal" and "organic" are used in an engineering sense or in a general natural-science sense. In an engineering sense, OSM considers coal to be rock, not an organic material, and "organic" to indicate biological materials that have undergone little decomposition (and hence are, from an engineering point of view, unstable). Montana uses "organic" in a general natural-science sense, to indicate that the material consists of molecules with a carbon framework. Montana argues that, as understood in the natural-science sense, its definitions exclude all organic materials other than those derived from coal, including all of the engineering-unstable materials excluded by the Federal regulations. Further, Montana's definitions allow only coal-derived materials, which are also allowed under the Federal regulations.

Based on this discussion, we agree with Montana that its definitions are not

inconsistent with the Federal definitions, and that the Montana program definitions need not be revised. The required program amendment will be further addressed in a finding below regarding another part of the required amendment (applying to permit application requirements), at ARM 17.24.305.

C.3. Ownership and Control (ARM 17.24.301(79), 17.24.303(14), and 17.24.404) (30 CFR Parts 701, 724, 750, 773, 774, 775, 778, 785, 795, 817, 840, 842, 843, 846, 847)

Montana has proposed various revisions to its ownership and control (O&C) regulations. Montana previously proposed various programmatic revisions to ownership and control in MT-003-FOR. However, in the final rule notice on MT-003-FOR dated February 12, 2002 (67 FR 6395), OSM deferred on Montana's ownership and control regulations. This was because OSM revised the Federal regulations in response to recent legal challenges contesting the validity of OSM's regulations. OSM published a final rule **Federal Register** notice dated December 19, 2000 (65 FR 79663), on revised ownership and control regulations. A new 30 CFR part 732 letter concerning ownership and control will be sent to the States in the future to advise them of changes they need to make to their program in order to be no less effective than the newly revised Federal regulations. Until such time as OSM issues revised O&C guidance concerning necessary programmatic revisions to the States, OSM defers on the proposed Montana revisions concerning ownership and control.

C.4. ARM 17.24.305(2)(b) Preparation and Certification of Maps, Plans, and Cross-Sections (30 CFR 780.14(c))

Montana proposed to revise this rule (1) To delete the term "professional geologist," (2) to change "registered professional engineer" to "licensed professional engineer," and (3) to allow licensed professional land surveyors to prepare and certify materials except for maps, plans, and cross-sections for sedimentation ponds and spoil disposal facilities.

In the August 19, 1992, **Federal Register** notice (57 FR 37436), OSM placed a required program amendment (30 CFR 926.16(e)(9)) on Montana to submit proposed revisions to remove parts of the State program which the OSM Director could not approve, but which had been promulgated by Montana. Those parts of the State program that OSM requested be removed included the phrases

"registered land surveyor," and "or a registered land surveyor" at ARM 26.4.305(2)(b) and 26.4.321(3) (now ARM 17.24.305(2)(b) and 17.24.321(3)). ARM 17.24.321(3) was revised as required in program amendment MT-003-FOR which was approved in a final rule published on February 12, 2002 (67 FR 6395). ARM 17.24.305(2)(b) and ARM 17.24.924(15) are addressed in this submittal, MT-023-FOR.

In its May 7, 2002, submittal, Montana proposed that maps, plans, and cross-sections required under certain sections of ARM 17.24.305 must be prepared by, or under the direction of, and certified by a qualified licensed professional engineer with assistance from experts in related fields, except that: (1) Maps and cross-sections required under certain sections of ARM 17.24.305 may be prepared by, or under the direction of, and certified by a qualified licensed professional land surveyor with assistance from experts in related fields, and (2) maps, plans, and cross-sections for sedimentation ponds and spoil disposal facilities may be prepared only by a qualified licensed, professional engineer. Montana states that MCA 37-67-101(6) provides that licensed professional land surveyors can prepare and certify mine maps and cross-sections but not plans. Montana has deleted the undefined term of "professional geologist." Montana has also replaced "registered" with "licensed" which reflects current State practices.

OSM placed the required program amendment on the Montana program as OSM did not interpret the MCA as authorizing registration procedures for registered land surveyors to perform such tasks as preparing and certifying plans and cross-sections for: Mineral storage, cleaning and loading areas; storage areas for soil, spoil, coal waste, and garbage or other debris; water diversions and facilities for collection, conveyance, treatment, storage, and discharge of water; and explosives storage and handling facilities. In this submission, Montana maintains that the MCA does allow licensed professional land surveyors to prepare and certify mine maps and cross-sections, but not plans. Therefore, Montana has revised the language to reflect these duties.

We agree with Montana that many of the materials required by this rule may be prepared by surveyors, particularly descriptive maps and cross-sections of existing features, or cross-sections that interpolate between sections of plans prepared by an engineer. But Montana also notes that surveyors may not design and plan many structures. In addition to the provision here at (2)(b)(ii) specifying