

ARM 17.24.638 (sediment control measures). As revised, all sediment controls must be constructed before mining operations, and comply with ARM 17.24.638 and 17.24.639. Similarly, OSM's rules at 30 CFR 816/817.46(b)(3) and (4) require all siltation structures to be constructed prior to mining operations, and impoundments to be in compliance with the impoundments rule. We find Montana's proposed revisions to be consistent with the Federal requirements.

At paragraph (4), Montana proposed to delete language specifying under which circumstances effluent limits apply, but the deleted language is replaced by the added language "all discharges which include * * * [water from disturbed areas]." Similarly, Montana proposed to delete a non-exhaustive list of effluent parameters which must be met, but also proposed to replace the deletion with language stating that discharges must be in compliance with all Federal and State laws and regulations and "all applicable effluent limitations." The Federal requirement at 30 CFR 816.42 requires that discharges of water from disturbed areas meet effluent limits promulgated by the U.S. Environmental Protection Agency. We find Montana's proposed revisions to be consistent with the Federal requirement. At subparagraph (4)(b), Montana proposed to delete language requiring that "when BTCA practices result in a point discharge, the discharge must meet applicable effluent limitations." Montana's explanation notes that this language is redundant. We agree that the deleted language is repetitive ("discharges must be in compliance with all federal and state laws and regulations and all applicable effluent limitations"). We also note that this deletion would not affect any legal requirements under the Montana counterparts to the Clean Water Act.

At paragraph (6), Montana proposed to delete a provision requiring that "BTCA [Best Technology Currently Available]" practices must be installed, operated, and maintained to treat any water discharged from the disturbed area to ensure compliance with all federal and state laws and regulations and the limitations of this rule." We agree with Montana that this provision was redundant, repeating other language in the rule as noted above.

For the reasons discussed above, we find that Montana's proposed revisions are no less effective than the Federal requirements, and we approve the proposed revisions.

C.21. ARM 17.24.634 Reclamation of Drainages (30 CFR 816/817.43)

At paragraph (2), Montana proposed to delete the requirement for operators to submit design modifications at least 120 days prior to reclamation of a drainage. However, the designs would still be required to be approved by the Department before construction begins. We note that reclaimed drainages meet the definition of "diversion" at ARM 17.24.301(33), and in particular are permanent diversions. Hence, under ARM 17.24.317, initial designs must be included in the initial permit application. Further, Montana proposed to delete language requiring the operator to notify the Department when construction begins, and to require Departmental inspection and approval of regraded drainages prior to resoiling and seeding. We agree with Montana that the explicit timeframe for submission of revised designs is not needed, so long as regulatory authority approval is obtained prior to construction. We further agree with Montana's explanatory note that operational efficiencies of both the mine operator and the Department are unnecessarily limited by the notification and pre-soiling inspection and approval requirements. The Federal regulations at 30 CFR 816/817.43 contain no such specific requirements.

Also at paragraph (2), Montana proposed to delete the word "detailed," used to describe the required designs. We agree that the specific requirements for the designs are specified elsewhere. Also proposed for deletion was the requirement that the designs "represent the state of the art in reconstruction of geomorphically stable channels." We agree that "state of the art" is a subjective standard difficult to enforce fairly, and that geomorphically stable channels are in any case required under paragraph (1) of the rule.

Montana further proposed to delete language requiring that drainage reclamation designs be certified by a qualified registered professional engineer. Montana's explanatory note indicates that the requirement "is unnecessary, because there does not appear to be more of a rationale for having such designs certified compared to any other work submitted by an operator that does not currently require certification. There is nothing particularly unique or critical (e.g., public safety) about drainage designs that requires certification. Thus, this requirement is proposed for deletion." We disagree with this position. Like diversions in general, reclaimed stream channels require the calculation of

runoff volumes, peak flows, channel-flow velocities, and erosive potential. In this case, there is a particular need to address "geomorphic habit or characteristic pattern," geomorphic stability, and riffle-pool sequences. Therefore, we find adequate need for professional engineer design and certification. We note that the Federal rules at 30 CFR 816/817.43(b)(4) require stream channel diversions of intermittent and perennial streams to be designed and certified by a registered professional engineer. However, we note that in this case deletion of this language does not in fact delete the requirement that reclaimed drainages be designed and certified by a registered professional engineer. As discussed above, these reclaimed drainages meet the Montana definition of "diversion" at ARM 17.24.301(33). Hence, under ARM 17.24.635(5), design and certification by a registered professional engineer is still required for any diversion of a stream channel.

At paragraph (3), Montana proposed to remove subparagraph (1)(a) from the requirements for which alternative reclamation techniques might be approved. This deletion would restrict the allowed variance to a greater extent than is currently approved. There is no exact Federal counterpart to this rule. The regulations at 30 CFR 780.21(h), 816.41(a) and (d), and 816/817.43(b) require that diversions protect the hydrologic balance, water quality, and channel volume. We find Montana's proposed deletion to be consistent with those requirements.

For the reasons discussed above, we find that Montana's proposed revisions are no less effective than the Federal requirements, and we approve the proposed revisions. As noted above, approval of the proposed deletion in paragraph (2) of the requirement for engineer design and certification of designs for drainage channel reclamation does not effectively eliminate that requirement, as it is duplicated in ARM 17.24.635(5).

C.22. ARM 17.24.639 Sedimentation Ponds and Other Treatment Facilities (30 CFR 816/817.46, 816/817.49)

At subparagraph (1)(c), Montana proposed to delete a requirement that sediment storage in sediment ponds be determined using the universal soil loss equation (with some specified parameters), the sediment density method, or other empirical method derived from regional studies. The revision would instead require only that the sediment storage volume be determined by a method approved by the Department. One currently-