

approved alternative to this, to provide 0.035 acre-feet per disturbed acre, was proposed to be revised by reducing the required volume to 0.02 acre-feet per acre and excluding acres of well-established reclamation. Lesser sediment storage would be allowed upon site-specific demonstration, but greater sediment volume may be required if necessary. The corresponding Federal regulation at 30 CFR 816/817.46(c)(1)(iii)(A) only requires sediment ponds to provide adequate sediment storage volume. The preamble to this regulation (48 FR 44032, 44041–2; 9/26/83) states that the determination of actual sediment storage volume is left to the professional engineer, and that in approving the design the regulatory authority must be satisfied that the storage volume is adequate. Montana has long-term experience in working with sediment volume estimates in its coal fields. Under the proposed revision, Montana must approve the method of storage volume calculation. Montana has also determined that 0.02 acre-feet of storage per acre of disturbed area is adequate. Montana also retains the ability to require greater storage volumes when necessary. Therefore, this proposed revision is no less effective than the corresponding Federal regulation.

At paragraph (2), Montana proposed to delete a requirement that the permittee may be required to conduct annual bathymetric studies of some sediment ponds. There is no such requirement in the Federal regulations. Therefore, the proposed deletion is not inconsistent with the Federal requirements.

At existing paragraph (6), Montana proposed to delete a statement that compliance with this rule does not eliminate operator responsibility for compliance with the effluent limits of ARM 17.24.633. The earlier rule, as discussed above, requires that all discharges must be in compliance with all effluent limits. We agree with Montana that the language proposed for deletion duplicates the requirements of ARM 17.24.633. Therefore, the proposed deletion is not inconsistent with the Federal requirements.

At existing paragraph (9), Montana proposed to delete a requirement that embankments for sediment ponds be constructed in compliance with ARM 17.24.603. As discussed above, Montana is moving such requirements from ARM 17.24.603 to this rule at paragraphs (11)–(17). Therefore, this proposed deletion does not remove any applicable requirements.

At existing paragraphs (12), (14), and (15), Montana proposed to delete

requirements that (1) Embankment heights be increased to allow for settlement; (2) specified embankment slopes; and (3) specified foundation scarification. There are no such requirements in the Federal regulations. Therefore, the proposed deletions are not inconsistent with the Federal requirements.

At new paragraphs (13) and (15)(c), Montana proposed to add requirements for embankment foundation construction on steeper slopes and embankment compaction standards. There are currently no such Federal requirements, though similar detailed design specification were earlier included in OSM's first permanent program regulations in 1979. These requirements are not inconsistent with the Federal requirements for impoundment stability at 30 CFR 816/817.49(a)(4) and foundation stability at 816/817.49(a)(6).

At paragraph (18), Montana proposed to add a requirement for temporary sediment controls during sediment pond construction. There is no such requirement in the Federal regulations, but this is not inconsistent with the requirement at 30 CFR 816/817.46(b) that additional contributions of sediment be prevented to the extent possible.

At paragraph (22)(b), Montana proposed a new requirement that, for ponds containing (rather than passing) design storms, the design certification indicate that safe dewatering will occur within appropriate times. Montana proposed this revision in response to our letter of July 10, 1997 (Item 10b), in which we identified issues in a previous program amendment submittal. The proposed addition is substantively the same as the Federal requirement at 30 CFR 816/817.49(c)(2).

At paragraph (27)(a), Montana proposed to delete a requirement that, for excavated sediment ponds, the perimeter slopes must not be steeper than 33 percent. Montana's explanatory note indicates that steeper slopes would help minimize the amount of land disturbed and increase operational efficiency. The Federal regulations at 30 CFR 816/817.46 and 816/817.49 do not specifically address excavated impoundments, nor their perimeter slopes. The vertical portion of any remaining highwall is required at 816/817.49(a)(10) to be far enough below water line to provide adequate safety for water users. Impoundment designs must be certified as meeting current, prudent engineering practices, which would include stable slopes; this would still be required by the Montana rule. We find

the proposal to be consistent with these requirements.

For the reasons discussed above, we approve these proposed revisions.

C.23. ARM 17.24.645(6) and 17.24.646(6) Ground Water Monitoring and Surface Water Monitoring (30 CFR 816/817.41(c), (e))

Montana proposed to revise these paragraphs to update references to standard water quality analysis methods that may be used for ground water monitoring. Most of the revisions are editorial clarifications. One of the standard references proposed for approval is the Department's "Circular WQB-7" (November 1998 edition). In a final rule dated February 12, 2002 (67 FR 6395, 6401; *see* Finding P), we deferred a decision whether to approve an earlier proposed revision to these paragraphs that referenced an earlier (April 1994) edition of "Circular WQB-7." We deferred then because Montana informed us that "Circular WQB-7" was being revised, and we could not approve the revised rule until the new edition of "Circular WQB-7" was reviewed by OSM to ensure that it did not conflict with 40 CFR part 136.

We have not yet been able to review the revised "Circular WQB-7." However, we note that the current proposed revision requires groundwater analyses to comply with both 40 CFR part 136 and "Circular WQB-7." Hence, if any conflict exists, the discrepancy would have to be resolved in favor of the more stringent requirements. Therefore, we find that the proposed revisions are not inconsistent with the Federal requirement, and we approve the revisions. This action supercedes the earlier deferral.

C.24. ARM 17.24.702(6) Redistribution and stockpiling of soil (30 CFR 816/817.22(d))

Montana proposed to delete the requirement that soil redistribution achieve "approximate uniform" thicknesses. Montana's explanatory note indicates that the intent is "to allow varying soil substrate thicknesses conducive to plant diversity and specific revegetation needs."

We note that ARM 17.24.701 requires removal of soil from all areas disturbed by mining operations. Hence, "redistribution" would imply that all such areas receive at least some soil during resoiling operations. Similarly, ARM 17.24.702(1) and (2) require soil to be distributed on all graded areas. Taken together with paragraph (6) as proposed for revision, all of these requirements would imply that no area disturbed by mining operations could be left without