

SMCRA does not directly address the review of permit applications under the Federal National Environmental Policy Act. However, SMCRA 503(a)(6) does require that State programs include a process for coordinating the review and issuance of coal mining permits with any other State permit process applicable to the operation. We find the proposed revisions to be consistent with the Federal provisions and we approve them.

#### *D. Revisions to Montana's Rules With No Corresponding Federal Regulation*

##### *D.1. Definition of "Railroad Loop", ARM 17.24.301(95)*

Montana proposed to define the term "railroad loop" in its program as meaning any rail transportation system within the mine permit area, whether in the form of a loop or a straight line. Montana's program currently uses the term "railroad loop" in its definition of "operation" and does not provide for straight rail configurations. Montana states that at the time the Act was passed (1973), most rail configurations were loops. In order to assure that the Department of Environmental Quality has jurisdiction over all rail configurations, Montana decided to define "railroad loop."

There is no direct Federal counterpart to Montana's proposed definition. At 30 CFR 816.180/817.180, OSM uses the term "railroad" in the discussion of utility installations. OSM does not differentiate among railroad configurations since that is not critical to SMCRA. Rather, it is the classification of railroads as utility installations and their regulation which is important. Therefore, OSM finds Montana's proposed definition to be consistent with the Federal regulations, and we approve it.

##### *D.2. MCA 82-4-241(2) Receipts Paid Into General Fund (30 CFR 800.50)*

Montana proposed to add two new provisions. At new paragraph (2), Montana proposed that bond forfeiture money not addressed in existing paragraph (1), be used for expenses pursuant to MCA 82-4-240, which addresses bond forfeiture reclamation. At new paragraph (3), Montana proposed a disposition of excess bond forfeiture funds when Montana cannot locate the funds' owners.

SMCRA does not specifically address these issues. The Federal regulations at 30 CFR 800.50 at (b)(2) require forfeiture receipts to be used for reclamation. At 30 CFR 800.50(2)(c), excess funds are to be returned to the party from whom they were collected, but the regulation

is silent about disposition of the funds when that party cannot be located. We find the Montana proposals to be consistent with the Federal provisions and we approve them.

#### **IV. Summary and Disposition of Comments**

##### *Public Comments*

We asked for public comments on the amendment (Administrative Record No. MT-20-06). We received a comment letter from one individual, with several comments as discussed below.

The commenter expressed a concern about the proposed removal of blasting restrictions. We interpret this as a reference to ARM 17.24.623, where Montana proposed to delete the requirement that the blasting period may not exceed an aggregate of 8 hours in any one day. We note that under ARM 17.24.624, blasting is still restricted to daylight hours. As discussed in Finding C.19 above, the Federal rules do not provide for any more strict limitation.

An additional concern was expressed regarding the proposal to allow steeper slopes on the insides of ponds and the possibility that under the proposal, cattle and wildlife would be more likely to drown in winter. We interpret this as a reference to ARM 17.24.639(27)(a) where Montana proposed to delete a requirement that, for excavated sediment ponds, the perimeter slopes must not be steeper than 33 percent. As discussed in Finding C.22. above, there is no more stringent Federal requirement, so Montana's proposal is not inconsistent with the Federal regulations. We note that at ARM 17.24.642(1)(d), permanent impoundments may be approved only on a demonstration of adequate safety and access for water users. However, this does not apply to temporary impoundments (nor does the corresponding Federal requirement at 30 CFR 816/817.49(b)(4)). We note that in Montana, where a given mining operation may exist in an area for decades, "temporary" may also mean decades. We note further the availability of the option under 30 CFR 700.12 to submit a petition for rulemaking, in case the commenter or other persons believe that the Federal rules should be revised to include long-term "temporary" impoundments under the category of permanent impoundments.

Another comment addressed the allowance to build excavations without spillways. We interpret this as a reference to ARM 17.24.639(7)(a), where Montana proposed to add a statement that excavated ponds need no spillway.

We note that this provision was actually submitted to OSM as part of an earlier program amendment that was approved (Administrative Record No MT-12-25, approved February 12, 2002; 67 FR 6395, 6401; *see* Finding N). However, in this current amendment Montana, in its narrative following Rule 639, indicated its intent in promulgating the provision saying that excavated ponds by their nature have no spillway. We interpret this as a reference to a dictionary definition of "spillway," which indicates that a spillway is a channel to rout excess water around an obstruction such as a dam. If the pond is totally excavated, there is no obstruction to route water around. We note that most of the spillway requirements in the Federal regulations are designed to prevent failure of pond embankments, which would allow all of the stored water in the pond, as well as incoming water, to threaten downstream areas. In excavated ponds, there is no danger of embankment failure, and the stored water will stay where it is. It is true that once the pond is filled, additional inflow will result in outflow from the pond. This will happen at one location of the pond's perimeter where the ground surface is lowest. Montana in its narrative recognizes this, and states that the outflow area below the excavation may require stabilization against erosion under ARM 17.24.640. That rule requires that discharge from ponds must be controlled by engineer-designed and certified structures or vegetation (open-channel spillways may also be stabilized by vegetation if the engineering design allows). Thus, if an engineer is designing outflow erosion control measures below an excavated pond, the resulting structure would be little different than a spillway. It just would not be bypassing an obstruction, and hence might not be called a spillway.

The commenter also noted Montana's proposal at ARM 17.24.634(2) to delete language requiring that drainage reclamation designs be certified by a qualified registered professional engineer. The commenter appears to have misinterpreted this rule to apply to impoundments, when it applies to reclaimed drainages that serve as diversions. As discussed in Finding C.21. above, although Montana is deleting the requirement that designs be certified by a qualified registered professional engineer, the requirement still exists at ARM 17.24.635(5). We further note that under ARM 17.24.639(22), all impoundments must be designed, inspected, and certified by a qualified registered professional