

engineer experienced in the construction of impoundments. The commenter further addresses ARM 17.24.634(2), where Montana proposed to delete the requirement that the regraded channel not be resoiled or seeded until inspected and approved by the Department. In particular, the commenter expressed skepticism that Montana would make an operator redo deficient work if it were already resoiled and seeded. As discussed in our finding, we agree with Montana 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 commenter's concern would apply equally to all phases of reclamation, and if justified would be a greater problem for general postmining surface configuration than for drainages. If the commenter's concern is justified, it would be a problem to be addressed in program oversight, particularly reviewing permit revisions approving "as-built" grading changes or drainage designs. In any case, we note that the Federal regulations at 30 CFR 816/817.43 contain no such specific pre-soiling inspection and approval requirements, so we cannot find Montana's deletion to be inconsistent with the Federal requirements.

The commenter further observes that many provisions proposed for deletion in this program amendment have already been deleted in rule packages Montana makes available to the public. As we note below (see "Effect of OSM's Decision"), Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any change of an approved State program be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any changes to approved State programs that are not approved by OSM. In our oversight of State programs, we recognize only the statutes, regulations and other materials we have approved, together with any consistent implementing policies, directives and other materials. We require Montana to enforce only approved provisions. If the commenter is aware that any unapproved revisions are being enforced or implemented, the commenter should notify OSM's Casper Field Office of such (See "For Further Information Contact" provided at the beginning of this rule) so that OSM may take any necessary site-by-site inspection and enforcement actions and include an appropriate review in our

annual oversight of the Montana program.

The commenter also expressed some concern with the proposed revision at ARM 17.24.733, where Montana proposed to delete a provision requiring that, in counting woody plants with multiple stems, only the tallest stem may be counted. As discussed above in Finding C.27., the critical factor is that any vegetation parameter (cover, production, stem density, or others) be measured using the same methodology in setting success standards and determining operator compliance with the standard.

Finally, the commenter noted that the definitions in Montana's statute (presumably, 82-4-203, MCA) need to be examined and discussed. We are unclear in what way this comment relates to the current amendment. We did not note in reviewing the proposed regulatory definitions any conflict with the statutory definitions. If the commenter has any specific concerns, they should be addressed to the Casper Field Office.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Montana program (Administrative Record No. MT-20-03).

We received a reply from the Bureau of Indian Affairs (Rocky Mountain Regional Office) indicating that the revisions were acceptable from their point of view (Administrative Record No. MT-20-04).

We also received a reply from the Mine Safety and Health Administration, indicating that they found no direct impact on employee or public health or safety, and hence had no comments or recommendations (Administrative Record No. MT-20-05).

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Montana proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On May 14, 2002, we requested comments on Montana's amendment from the SHPO and ACHP (Administrative Record No. MT-20-03), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve, with the following exceptions and additional requirements, Montana's May 7, 2002 amendment.

We defer decision on the following proposed revisions: Finding No. C.3., ARM 17.24.301(79), 17.24.303(14), and 17.24.404, concerning ownership and control; and Finding No. C.30., ARM 17.24.932(5)(b), concerning inspections of durable rock fills on underground mines.

With the requirement that Montana further revise its rules, we do not approve, as discussed in: Finding No. C.29, ARM 17.24.911(7)(d), concerning replacement of water supplies harmed by underground mining activities.

To implement this decision, we are amending the Federal regulations at 30 CFR part 926, which codify decisions concerning the Montana program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires a State program to demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

Effect of OSM's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any change of an approved State program be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any changes to approved State programs that are not approved by OSM. In the oversight of Montana's program, we will recognize only those statutes, regulations and other materials we have approved, together with any consistent implementing policies, directives and other materials. We will require Montana to enforce only approved provisions.