

DEPARTMENT OF THE INTERIOR**Office of Surface Mining Reclamation and Enforcement****30 CFR Part 938****[PA-143-FOR]****Pennsylvania Regulatory Program**

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and notice of public hearing on a proposed action.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Pennsylvania regulatory program (the "Pennsylvania program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Pennsylvania proposes revisions to its program in response to our final rulemaking of December 27, 2001 (66 FR 67010) regarding mine subsidence control, subsidence damage repair or compensation, and water supply replacement or restoration. In that rulemaking, we required changes to the Pennsylvania program to make it no less effective than the Federal regulations. This amendment addresses those required changes. The specific changes Pennsylvania is proposing to make are detailed below. Pennsylvania has also submitted supplementary information that appears to satisfy some of the required changes without the need of additional regulations or modification to existing regulations or statutes. That information is also detailed below. Pennsylvania intends to revise its program to be consistent with the corresponding Federal regulations and/or SMCRA.

In this proposed rule, we are asking for comments regarding the changes Pennsylvania is proposing to make to its regulations related to the implementation of the Bituminous Mine Subsidence and Land Conservation Act (BMSLCA). In a separate proposed rulemaking, also published today, we are asking for comments on proposed supersession of some of the provisions of BMSLCA. We will be holding public hearings on both the proposal for superseding certain provisions of BMSLCA and Pennsylvania's proposed changes to its regulations, as noted below, on the dates indicated below under DATES. Pennsylvania will also be holding public hearings on its proposed changes to its regulations. In order to accommodate those who wish to speak at both Pennsylvania's and our public hearings, the hearings will be held on

the same days and at the same locations, but at different times.

This document gives the times and locations that the Pennsylvania program is available for your inspection, the comment period during which you may submit written comments on this proposed action, and the procedures that we will follow for the public hearings.

DATES: We will accept written comments on this proposal until 4 p.m., e.s.t. October 22, 2003. We will hold public hearings on the proposal on October 15, 2003, at the Best Western University Inn in Indiana, Pennsylvania at 3 p.m. and at 7 p.m. and on October 16, 2003, at the Holiday Inn Meadow Lands in Washington, Pennsylvania at 3 p.m. and at 7 p.m.. We will accept requests to speak at a hearing until 4 p.m., e.s.t. on October 7, 2003.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to George Rieger, Acting Field Office Director at the address listed below.

You may review copies of the Pennsylvania program, this proposal, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays.

George Rieger, Acting Director,
Harrisburg Field Office, Office of
Surface Mining Reclamation and
Enforcement, Harrisburg
Transportation Center, Third Floor,
Suite 3C, 4th and Market Streets,
Harrisburg, Pennsylvania 17101,
Telephone: (717) 782-4036, E-mail:
grieger@osmre.gov.
Joseph P. Pizarchik, Director, Bureau of
Mining and Reclamation,
Pennsylvania Department of
Environmental Protection, Rachel
Carson State Office Building, PO Box
8461, Harrisburg, Pennsylvania
17105-8461, Telephone: (717) 787-
5103.

FOR FURTHER INFORMATION CONTACT:
George Rieger, Telephone: (717) 782-
4036, E-mail: grieger@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Pennsylvania Program
- II. Description of the Proposed Action
- III. Public Comment Procedures
- IV. Procedural Determinations

I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders

by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Pennsylvania program in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning Pennsylvania program and program amendments at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Description of the Proposed Action

By letter dated August 27, 2003, (Administrative Record No. PA 841.64) as modified on September 3, 2003 (Administrative Record No. PA 841.65), Pennsylvania sent us a proposed amendment to its program under SMCRA (30 U.S.C. 12501 *et seq.*). Pennsylvania sent the amendment in response to the required program amendments at 30 CFR 938.16(hhhh)—(bbbbb). We required those amendments in our December 27, 2001, final rule, (66 FR 67010) as a result of our review of Pennsylvania's amendment to the BMSLCA and its implementing regulations regarding repair or compensation for structures and restoration or replacement of water supplies damaged by underground mining operations.

Pennsylvania responded to the required amendments related to its regulations in a pre-submission assistance request dated February 25, 2002 (Administrative Record No. PA 841.49). Pennsylvania noted in the pre-submission assistance request that it was unable to address the required amendments involving changes to the BMSLCA because the Pennsylvania General Assembly is the only State entity with the authority to make statutory changes. While Pennsylvania can recommend changes to the statute it has no control over their adoption or the time frame in which the General Assembly might enact them. Accordingly, in a separate rulemaking located in this same **Federal Register** issue, OSM is proposing to supersede those sections of the BMSLCA that it found to conflict with SMCRA. OSM reviewed the pre-submission assistance request and submitted its