

25 square mile geographic area encompassing a proposed coal preparation facility. Although these terms were not specifically used in the CRDCA, the definitions were used in section 30.54a(c) and (d) regarding criteria for selecting sites for coal refuse disposal operations. We approved the use of the 1-mile radius in identifying alternative sites for new refuse disposal areas to support an existing coal mining activity and the use of the 25 square mile geographic area for alternative sites for a proposed coal preparation facility (63 FR 19806). Accordingly, the Director is approving the definition of the term "search area" in 25 Pa. Code 90.202.

The term "selected site" is defined as a location selected by the applicant and approved by the Department for which the applicant can then apply for a permit to conduct coal refuse disposal activities. This term is not used in the CRDCA and there is no comparable term in the Federal regulations. We are approving the term because we have already approved the concept of coal refuse disposal site selection set forth in the CRDCA at 52 P.S. 30.54a(a) (63 FR 19806), and because the term is not inconsistent with SMCRA or the Federal regulations.

25 Pa. Code 90.202 General requirements. Subsection (f) provides that as part of the site selection process, an applicant may request approval for more than one site. The applicant will have the option of choosing a selected site from those approved by the Department to be used as the site for submitting an application on which to conduct coal refuse disposal operations. While there is no comparable Federal regulation for this section, there is nothing in SMCRA or the Federal regulations to prevent an operator from examining any number of sites to conduct refuse disposal operations. Any of the sites chosen must undergo the permitting process and be approved by the Department in accordance with the counterparts to SMCRA and the Federal regulations. Accordingly, the Director is approving subsection (f) of 25 Pa. Code 90.202.

25 Pa. Code 90.203 Proposing a preferred site. This section provides that if an applicant proposes to use a preferred site, the Department will approve the proposed site subject to 25 Pa. Code 90.202(c) (relating to general requirements) provided the applicant demonstrates that the attendant adverse environmental impacts will not clearly outweigh the public benefits. This section relates to section 30.54a(a) of the CRDCA, which provides that preferred sites shall be used for coal refuse disposal unless the applicant

demonstrates another site is more suitable; and that where the adverse environmental impacts of the preferred site clearly outweigh the public benefits, the site shall not be considered a preferred site. We approved section 30.54a(a) in the April 22, 1998, **Federal Register** (63 FR 19804). Because 25 Pa. Code 90.203 is consistent with the approved State statutory provision, the Director is approving it.

25 Pa. Code 90.206 Disapproval of a proposed site This section provides that if the Department disapproves the applicant's proposed site, the applicant may submit a new proposal supporting the selection of another site located within or outside the search area. There is no similar language in the CRDCA or SMCRA or the Federal regulations. However, there is no provision in SMCRA or the Federal regulations that prohibits an applicant from submitting alternative proposals if one is turned down. The Director finds this section is not inconsistent with the Federal regulations or SMCRA and is approving it.

25 Pa. Code 90.207 Approval of a selected site. This section provides that Pennsylvania's approval of a selected site does not indicate it will approve an application for coal refuse disposal activities on the selected site. The Director finds that this provision is consistent with Pennsylvania's permitting responsibilities under State counterparts to permitting requirements contained in SMCRA and the Federal regulations, and is therefore approving it.

Subchapter F. Coal Refuse Disposal Activities on Areas with Preexisting Pollutational Discharges. This is a new section added by Pennsylvania. These regulations are modeled on existing regulations regarding remining areas with preexisting pollutational discharges found in 25 Pa. Code Chapter 87, Subchapter F and approved by OSM in the February 19, 1986 **Federal Register** (51 FR 5997).

25 Pa. Code 90.301 Scope. This section gives a general overview of the sections that follow and notes that Chapter 86 (relating to surface and underground coal mining: General) and Subchapters A–D apply to authorizations to mine areas with preexisting pollutational discharges except as specifically modified by this chapter. The Director has approved, with some conditions, the concept of establishing coal refuse disposal areas on sites with preexisting pollutational discharges in the analysis of the amendment of the CRDCA in the April 22, 1998 **Federal Register** (63 FR 19802). Section 25 Pa. Code 90.301

introduces the concept in regulation; therefore the Director is approving this section.

25 Pa. Code 90.302 Definitions, Baseline Pollution Load. Pennsylvania added the definition of the term "baseline pollution load" to 25 Pa. Code 90.302. This term is defined as, "The characterization of the pollutational material being discharged from or on the pollution abatement area, described in terms of mass discharge for each parameter deemed relevant by the Department, including seasonal variations and variations in response to precipitation events. The Department will establish in each authorization the specific parameters it deems relevant for the baseline pollution load, including, at a minimum, iron and acid loadings." This term was similarly defined in the CRDCA except for the last sentence. The term, including the last sentence, was also defined in 25 Pa. Code 87.202 regarding remining on surface mining sites with pollutational discharges. We approved the definition in our evaluation of the Chapter 87 regulations in the February 19, 1986 **Federal Register** (51 FR 5997). We are approving the definition for use in coal refuse disposal operations for the same reasons.

25 Pa. Code 90.302 Definitions, Best Professional Judgment. Pennsylvania added the definition of the term "best professional judgment" to 25 Pa. Code 90.302. The term is defined to mean, "the highest quality technical opinion forming the basis for the terms and conditions of the treatment level required after consideration of all reasonably available and pertinent data. The treatment levels shall be established by the Department under sections 301 and 402 of the Federal Water Pollution Control Act (33 U.S.C.A. §§ 1311 and 1342)." This definition is identical in substance to the definition of "best professional judgment" found at 25 Pa. Code sections 87.202 and 88.502, which was approved by OSM as part of Pennsylvania's standards for treatment of preexisting discharges on remined areas in the February 19, 1986, **Federal Register** (51 FR 5997). As a result, the Director is approving the definition at 25 Pa. Code 90.302.

25 Pa. Code 90.302 Definitions, Coal Refuse Disposal Activities. The term "coal refuse disposal activities" was similarly defined in the CRDCA and in this section to mean the storage, dumping or disposal of any waste coal, rock, shale, slurry, culm, gob, boney, slate, clay, underground development wastes, coal processing wastes, excess soil and related materials, associated with or near a coal seam, that are either