

brought above ground or otherwise removed from a coal mine in the process of mining coal or are separated from coal during the cleaning or preparation operations. The term does not include the removal or storage of overburden from surface mining activities. In our analysis of the term in the April 22, 1998, **Federal Register** (63 FR 19803), we required Pennsylvania to amend its program to clarify the meaning of the term "excess soil and related materials" as used in the definition. This requirement was codified at 30 CFR 938.16(vvv).

In the February 2, 2000, **Federal Register** (65 FR 4882), we noted that Pennsylvania submitted information in response to the required amendment at 30 CFR 938.16(vvv). As part of that response, Pennsylvania defined the term "excess soil and related material to mean rock, clay or other material located immediately above or below a coal seam and which are extracted from a coal mine during the process of mining coal. The term does not include topsoil or subsoil." In that **Federal Register** notice, we indicated that we would remove the required program amendment when the clarification is incorporated in Pennsylvania's regulations and those regulations are approved by OSM. Pennsylvania incorporated the definition of "excess soil and related materials" verbatim into its regulations at 25 Pa. Code 90.302. Therefore, the Director is approving the definition and removing the required amendment at 30 CFR 938.16(vvv).

**25 Pa. Code 90.303 Applicability.** Subsection (b) provides that:

Notwithstanding subsection (a), authorization will not be granted under this subchapter for repermitting under §§ 86.12 and 86.14 (relating to continued operation under interim permits; and permit application filing deadlines), permit renewals under § 86.55 (relating to permit renewals: general requirements) or permit transfers under § 86.56 (relating to transfer of permit).

There is no direct Federal counterpart to this provision but the Director is approving it because it acts to limit permits where coal refuse disposal activities can occur. This section does not make Pennsylvania's coal refuse disposal regulations less effective than Federal regulations.

**25 Pa. Code 90.304 Application for authorization.** This section provides the permit application requirements for operators seeking to obtain authorization to conduct refuse disposal operations on areas with preexisting pollutional discharges. Parts of section 6.2(e) (52 P.S. 30.56b(e)) of the CRDCA are repeated in this section. Additionally, this section copies 25 Pa.

Code 87.204, which contains the surface coal mining requirements for reining areas with pollutional discharges. As noted above, OSM approved 25 Pa. Code 87.204 in the February 19, 1986, **Federal Register** (51 FR 5997). The Director is approving this section for the same reasons.

**25 Pa. Code 90.305 Application approval or denial.** Subsection (a)(5) provides standards for success of revegetation on areas approved under this section. For areas previously reclaimed to the standards of Chapters 87, 88 and 90, the revegetation success standards of 25 Pa. Code 90.159 apply. OSM previously approved the revegetation standards in 25 Pa. Code 90.159. Therefore, the Director is approving this portion of the amendment.

Subsection (a)(5) also provides that for those sites not previously reclaimed to the standards of Chapters 87, 88, and 90 the standards of subsection (a)(5)(i)–(iii) apply providing the site is not a bond forfeiture. These standards are the same as those OSM approved for previously affected sites in 25 Pa. 87.205(a)(5)(i)–(iii). Therefore, the Director is approving this section.

The submission of this portion of the amendment satisfies the required amendment codified at 30 CFR 938.16(zzz). This required amendment indicates that Pennsylvania must amend its program to be no less effective than 30 CFR 816.116(b)(5), by limiting the application of the revegetation standards under subsection 6.2(k) of the CRDCA to areas that were previously disturbed by mining and that were not reclaimed to the State reclamation standards.

The submission of this portion of the amendment also allows us to remove the required amendment codified at 30 CFR 938.16(aaaa). This section required Pennsylvania to amend its program to clarify that under Subsection 6.2(l) of its Coal Refuse Disposal Act, a special authorization for coal refuse disposal operations will not be granted, when such an authorization would result in the site being reclaimed to lesser standards than could be achieved if the moneys paid into the Fund, as a result of a prior forfeiture on the area, were used to reclaim the site to the standards approved in the original permit under which the bond moneys were forfeited. Pennsylvania responded to this required amendment by including language in 25 Pa. Code 90.305(a)(5) that provides an exception to the revegetation standards for special authorization projects. The revegetation standards of that section are not applicable when such projects are conducted on bond forfeiture sites

not previously reclaimed to the standards of Chapters 87, 88 and 90, where the money paid into the fund is sufficient to reclaim the forfeited site to the applicable standards. Additionally, we find that the Pennsylvania program prohibits the issuance of a special authorization where preexisting pollutional discharges would not be adequately treated where proceeds paid into the Surface Mining Conservation and Reclamation Fund as a result of a bond forfeiture on the proposed special authorization site are sufficient to pay for such treatment. In other words, treatment of pollutional discharges will not be compromised by special authorizations. Our finding is based upon two premises. First, according to PADEP, there are no currently existing sites for which the forfeited bond would be sufficient to pay for adequate discharge treatment. Second, discharge treatment costs for any future sites will be covered either by conventional bonds, or by treatment trust funds. In the event of operator default on such sites, proceeds from the conventional bonds or treatment trust funds must be expended to accomplish discharge treatment on the sites to which they are dedicated. Thus, where those proceeds are adequate to pay for discharge treatment, they must be used to that end. For these reasons, the remaining concerns that led to the imposition of 30 CFR 938.16(aaaa) have been satisfied, and we are hereby removing this required amendment.

30 CFR 816.116(b)(5) requires that vegetative cover, for areas previously disturbed by mining that were not reclaimed to the standards of Subchapter K, shall not be less than the ground cover existing before redisturbance and shall be adequate to control erosion. In Pennsylvania's amendment, 25 Pa. Code 90.305(a)(5)(ii) and (iii) contains these requirements. As a result, Pennsylvania has satisfied the conditions of the required amendment and we are removing it.

Subsection (d) provides that the authorization allowed under this subsection is only for the pollution abatement area and does not apply to other areas of the permit. The Director is approving this portion of the regulations because it limits the areas of the permit on which coal refuse disposal activities can occur. While there is no direct Federal counterpart to this provision, it does not make this portion of the regulations less effective than the Federal regulations regarding coal refuse disposal.

**25 Pa. Code 90.306 Operational requirements.** This section provides that operators must comply with Chapter 86