

requirements, implement the approved water monitoring program, implement the approved abatement plan and notify the Department prior to the completion of each step of the abatement plan. In addition, this section requires a progress report be sent to the Department within 30 days of completion of each step of the abatement program. We approved the statutory authority for these regulations, contained in 52 P.S. 30.56b(f)(1)–(4), on April 22, 1998 (63 FR 19808). Section 90.306 contains the same requirements as 25 Pa. Code 87.206 that OSM approved in the February 19, 1986, **Federal Register** (51 FR 5997) except that the reporting statement signed by the operator in section (a)(4) need not be notarized in 25 Pa. Code 90.306(a). The lack of a notarized seal on the operator's statement does not lessen the reporting requirements of this section. There is no comparable Federal requirement to this section so Pennsylvania's reporting requirements are more stringent than any Federal provisions. The Director is approving this section.

**25 Pa. Code 90.307 Treatment of discharges.** This section provides that operators shall comply with the effluent standards of 25 Pa. Code 90.102 for treating discharges, except for preexisting discharges that are not encountered during coal refuse activities or implementation of the abatement plan. For preexisting discharges that are not encountered during coal refuse activities or implementation of the abatement plan, the operator must treat the discharge to comply with the effluent limits established by best professional judgment. The effluent limitations established by best professional judgment may not be less than the baseline pollution load.

This section is the same as 25 Pa. Code 87.207. OSM approved 25 Pa. Code 87.207 in the February 19, 1986, **Federal Register** (51 FR 5997). However, both 25 Pa. Code 87.207 and 90.307 contain language that Pennsylvania added after the 1986 approval. In 1989, Pennsylvania amended 25 Pa. Code 87.207(b) by adding the following language:

If the baseline pollution load when expressed as a concentration for a specific parameter satisfies the effluent limitations at § 87.102 (relating to hydrologic balance: Effluent standards) for that parameter, the operator shall treat the preexisting discharge for that parameter to comply with either effluent limitations established by best professional judgment or the effluent limitations at § 87.102.

In our evaluation of this revision, as published in the May 31, 1991, **Federal**

**Register** (56 FR 24657,) we noted that while the United States Environmental Protection Agency (EPA) generally concurred with the amendment package that included the above-quoted change, we asked for a specific determination by EPA as to whether the new language in section 87.207(b) is consistent with section 301(p) of the Federal Water Pollution Act, 33 U.S.C. 1311(p). Section 301(p) authorizes the issuance of National Pollutant Discharge Elimination System permits with modified effluent limitations for pH, iron and manganese on previously mined sites with preexisting discharges. We decided to defer a decision on this provision, pending specific EPA concurrence.

While we did not receive specific concurrence from EPA on revised 25 Pa. Code 87.207(b), EPA did publish a final rule on January 23, 2002 (67 FR 3370), that addresses our questions concerning the revision. Appendix B, part I d, indicates that:

In the event that a pollutant concentration in the data used to determine baseline is lower than the daily maximum limitation established in subpart C of this part for active mine wastewater, the statistical procedures should not establish a baseline more stringent than the BPT and BAT effluent standards established in subpart C of this part.

This language, plus EPA's concurrence received for this amendment, makes 25 Pa. Code 90.307 no less effective than the Federal regulation at 30 CFR 816.42 which provides that discharges of water from areas disturbed by surface mining activities must be made in compliance with effluent limitations for coal mining promulgated by EPA.

The submission of this section also satisfies required amendments codified at 30 CFR 938.16(xxx) and (yyy) that we put into place as a result of our review of the CRDCA (63 FR 19802). The required amendment at 30 CFR 938.16(xxx) indicates that Pennsylvania shall amend its program to clarify, in regulations developed to implement the provisions of section 6.2 of the CRDCA, that preexisting discharges that are encountered must be treated to the effluent standards at 25 Pa. Code 90.102.

In the February 2, 2000, **Federal Register** (65 FR 4883), we indicated that we would remove the required amendment at 30 CFR 938.16(xxx) if Pennsylvania submitted regulations that clarified that under section 6.2 of the CRDCA, preexisting discharges that are encountered must be treated to the State effluent standards at 25 Pa. Code 90.102. In its amendment, Pennsylvania submitted section 25 Pa. Code 90.307

which indicates that in subsection (a) that all discharges, except for preexisting discharges that are not encountered during coal refuse disposal activities or the implementation of the abatement plan, must comply with 25 Pa. Code 90.102. In this regulation, Pennsylvania has satisfied the conditions of the required amendment and, as a result, we are removing it.

The required amendment at 30 CFR 938.16(yyy) indicates that Pennsylvania shall amend its program to clarify that subsection 6.2(h) of the CRDCA pertains to preexisting discharges that are not encountered. In the **Federal Register** of April 22, 1998 (63 FR 19810), we approved section 6.2(h) of the CRDCA to the extent that it provides that an operator may only discontinue treating preexisting discharges that are not encountered when the operator demonstrates that the "baseline" pollution load is no longer being exceeded. Preexisting discharges must be treated to the water quality standards of 25 Pa. Code 90.102.

In this amendment, Pennsylvania submitted 25 Pa. Code 90.307(b) which provides that preexisting discharges that are not encountered must comply with effluent limitations established by best professional judgment. The best professional judgment limitations cannot be less than the baseline pollution load. Subsection (d) in describing when an operator may discontinue treating the discharges under subsection (b), indicates that treatment may be discontinued when the preexisting discharges are meeting the effluent limits established in subsection (b). Taken together, subsections (b) and (d) satisfy the conditions of the required amendment at 30 CFR 938.16(yyy) and as a result, we are removing it.

**25 Pa. Code 90.308 Request for bond release.** This section is the same as 25 Pa. Code 87.208 that OSM approved on February 19, 1986. The Director is approving this section for the same reason. We note that section 90.308 states that 25 Pa. Code subsection 86.172(d) shall not apply to the release of bonds for pollution abatement areas. Subsection 86.172(d) no longer exists; however, since the now deleted provision would not have applied to bond releases under section 90.308 anyway, the cross-reference to it is a nullity.

**25 Pa. Code 90.309 Criteria and schedule for release of bonds on pollution abatement areas.** For the most part, this section is the same as 25 Pa. Code 87.209 that OSM approved on February 19, 1986, except for two areas. In the first, the percentage of bond