

release is different. In 25 Pa. Code 87.209(a), the initial bond release can be up to 60% of the bond and the percentage of the phase II bond release in 25 Pa. Code 87.209(b) is not specified (subsection (b) specifies only that the Department will release an additional bond while retaining an amount sufficient to cover the cost of reestablishing vegetation if completed by a third party). In the regulations covering coal refuse disposal at 25 Pa. Code 90.309(a), the initial bond release is up to 50% of the bond and the phase II bond release specified in 25 Pa. Code 90.309(b) can be up to an additional 35% of the bond while retaining an amount sufficient to cover the cost of reestablishing vegetation if completed by a third party. The regulations at 25 Pa. Code 90.309(a) could result in retention of more of the bond after phase I release than the counterpart regulations at 25 Pa. Code Chapter 87. This would provide more funds available to complete reclamation if an operator defaults after phase I release. Therefore, the Director is approving this portion of the amendment.

The second area of difference is at 25 Pa. Code 90.309(b)(3)(ii)(A)(I). This section deals with one of the standards the operator must achieve to receive a bond release of up to 35%. The section provides that this portion of the bond can be released if the operator, among other things, has not caused degradation of the baseline pollution load for a period of twelve months from the date of the initial bond release under subsection (a), if backfilling, final grading, drainage control, placement of impermeable cover, topsoiling and establishment of revegetation to achieve the standard of success for revegetation in 25 Pa. Code 90.305(a)(5) have been completed. The similar section approved by OSM on February 19, 1986, for surface mines at 25 Pa. Code 87.209(b)(3)(ii)(A)(I) indicated that up to 35% of bonds could be released if the operator, among other things, had not caused degradation of the baseline pollution load for the twelve months prior to the date of application for bond release and until the bond release is approved under subsection (b), if final grading, drainage control, topsoiling and establishment of revegetation to achieve the standard of success for revegetation in 25 Pa. Code 87.205(a)(5) have been completed. The difference in the two sections amounts to the period of time for demonstrating that the site did not degrade the baseline pollution load. The proposed rules at 25 Pa. Code 90.309(b)(3)(ii)(A)(I) provide for a demonstration period of twelve months

from the date of the initial bond release, while in the previously approved regulation at 87.209(b)(3)(ii)(A)(I) the demonstration period is for twelve months prior to the date of application for bond release and until the bond release is approved. Pennsylvania indicated that the demonstration period for the bond release on coal refuse disposal sites was set by the CRDCA which is why it is different than the surface mining regulations in Chapter 87. There is no comparable Federal regulation for this provision. However, the demonstration period is not inconsistent with the Federal regulations at 30 CFR 800.40(c)(2) regarding the release of Phase II bonds. As a result, the Director is approving it.

The remaining sections of 25 Pa. Code 90.309 are the same as the sections of 25 Pa. Code 87.209 that OSM previously approved on February 19, 1986. Therefore the Director is approving them.

#### **Subchapter G. Experimental Practices.**

*25 Pa. Code 90.401 General.* This section provides the standards that coal refuse disposal practices must attain to be considered experimental practices. Subsection (a) is approved because it is substantively identical to, and therefore no less stringent than, the corresponding portions of section 711 of SMCRA. In addition, subsection (b) requires experimental practice permits to meet all the provisions, standards, and information requirements of 30 CFR 785.13. The Director finds that this provision will make Pennsylvania's regulations no less effective than 30 CFR 785.13 and is therefore approving it.

Submission of this portion of the amendment also satisfies the required amendment codified at 30 CFR 938.16(bbbb). This required amendment indicates that Pennsylvania must amend its program by adding implementation rules no less effective than 30 CFR 785.13 and no less stringent than SMCRA section 711. Further, Pennsylvania must clarify that experimental practices are only approved as part of the normal permit approval process and only for departures from the environmental protection performance standards, and that each experimental practice receive the approval of the Secretary. This required amendment is satisfied by subsection 90.401(a), which is substantively identical to most of section 711 of SMCRA, and by subsection (b), which requires compliance with 30 CFR 785.13, which contains the remaining applicable requirements of section 711 of SMCRA not covered by 90.401(a). Those

remaining requirements are that experimental practices be approved only as departures from the performance standards in individual cases, and that such practices must also receive the approval of the Secretary of the United States Department of the Interior, as delegated to the OSM Director. Therefore, we are removing 30 CFR 938.16(bbbb).

#### **Removal of Required Amendments at 30 CFR 938.16(hh) and (kk)**

In the required amendment codified at 938.16(hh), we required Pennsylvania to amend 25 Pa. Code 89.59(a)(1) and (2) or otherwise amend its program to be no less effective than 30 CFR 784.14(h)(1) to require the monitoring plan to specify that, at a minimum, the total dissolved solids or specific conductance, pH, total iron, total manganese, and water levels shall be monitored and data submitted to Pennsylvania at least every 3 months for each monitoring location.

In response to this required amendment, Pennsylvania submitted changes to 25 Pa. Code 89.59(a)(3). The changes include deleting the last sentence from the section that reads, "The Department will approve the nature of data, frequency of collection, reporting requirements and the duration of the monitoring programs," and adding the following two sentences to the end of the section:

Surface water shall be monitored for parameters that relate to the suitability of the surface water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance as set forth in § 89.36 (relating to protection of hydrologic balance). At a minimum, total dissolved solids or specific conductance corrected to 25°C, total suspended solids, total iron, total manganese, acidity, alkalinity, pH, sulfates and flow shall be monitored and reported to the Department at least every 3 months for each monitoring location.

Pennsylvania is also proposing to change 25 Pa. Code 89.59(b) by adding a sentence to the end of the section that reads, "The Department may also require the operator to conduct monitoring and reporting more frequently than every 3 months and to monitor additional parameters beyond the minimum specified in this section."

We find that Pennsylvania's regulatory language regarding surface and groundwater monitoring is substantively identical to the corresponding portions of the Federal requirements at 30 CFR 784.14(h)(1) and therefore satisfies the required amendment at 30 CFR 938.16(hh). We are removing the required amendment at 30 CFR 938.16(hh).