

In regard to Pennsylvania's submission under Administrative Record No. PA 881.00, there were three responses from Federal agencies: two from MSHA and one from NRCS. MSHA's New Stanton Office replied on January 11, 2002, (Administrative Record No. PA 881.03) that the amendment did not conflict with any of MSHA's regulations under 30 CFR parts 75 and 77. MSHA's Wilkes-Barre Office replied on January 14, 2002, (Administrative Record No. PA 881.04) that nothing in the amendment conflicted with existing MSHA regulations. NRCS replied on January 29, 2002, (Administrative Record No. PA 881.05) that it found no inadequacies with the proposed change.

In regard to Pennsylvania's submission under Administrative Record No. PA 880.00, we received a response from MSHA's Wilkes-Barre office on September 6, 2002 (Administrative Record No. PA 880.04), indicating that it had no comments on the amendment.

#### *Environmental Protection Agency (EPA) Concurrence and Comments*

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). On February 25, 2002 (Administrative Record No. PA 837.107), EPA informed us that there are no apparent inconsistencies with the Clean Water Act or other statutes or regulations under EPA's jurisdiction regarding Pennsylvania's submission under Administrative Record No. PA 837.101. EPA had three additional comments:

(1) EPA commended the portion of the amendment requiring the use of previously impacted areas for refuse disposal because of the environmental benefits of reclamation of previously impacted areas and because it would spare non-impacted areas that would otherwise be designated as refuse disposal sites.

OSM accepts the comments and also recognizes the environmental benefits of Pennsylvania's refuse disposal regulations.

(2) EPA indicated that it is apparent that some refuse disposal fills will be in headwater areas and pointed out that filling of waters of the United States requires proper authorization under Section 404 of the Clean Water Act, administered by the U.S. Army Corps of Engineers.

This comment is similar to one EPA made during its review of the changes to the CRDCA that precipitated this amendment. For a detailed discussion of OSM's response to the comment, see the final rule of April 22, 1998 (63 FR 19816–19819).

(3) Discharges from refuse disposal sites into waters of the United States require National Pollutant Discharge Elimination System (NPDES) permits from the Pennsylvania Department of Environmental Protection. NPDES permits for refuse disposal discharges must meet the more stringent of effluent guideline regulations under 40 CFR part 434 or those effluent limits necessary to comply with Pennsylvania's water quality standards for the receiving stream.

We note that one of the conditions of EPA's concurrence with the CRDCA involved the relationship between discharges and NPDES permits. For a full discussion of the Director's concurrence with this condition, see the final rule of April 22, 1998 (63 FR 19818–19819).

On September 5, 2002 (Administrative Record No. PA 880.05), EPA also responded to our request for comments on Pennsylvania's submission under Administrative Record No. PA 880.00. After reviewing Pennsylvania's submission, EPA determined that there were no apparent inconsistencies with the Clean Water Act or other statutes and regulations under its jurisdiction.

#### **V. OSM's Decision**

Based on the above findings, we approve the amendment Pennsylvania sent us on December 20, 2001. In addition, we are removing the required amendments codified at 30 CFR 938.16(hh), (kk), (vvv), (www), (xxx), (yyy), (zzz), (aaaa), and (bbbb).

To implement this decision, we are amending the Federal regulations at 30 CFR Part 938, which codify decisions concerning the Pennsylvania program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

#### **VI. Procedural Determinations**

##### *Executive Order 12630—Takings*

This rule does not have takings implications. This determination is

based on the analysis performed for the counterpart Federal regulation.

##### *Executive Order 12866—Regulatory Planning and Review*

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

##### *Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

##### *Executive Order 13132—Federalism*

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

##### *Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and