

Stanton and Wilkes-Barre Offices). We also received comments from Citizens for Pennsylvania's Future (PennFuture) and the Pennsylvania Coal Association (PCA).

### III. OSM's Findings

Following are the findings we made concerning removing the required amendment under SMCRA and the Federal regulations at 30 CFR 938.15 and 938.17. We are removing the required amendment at 30 CFR 938.16(h).

As we noted in our proposed rulemaking concerning removal of 30 CFR 938.16(h), our oversight activities had determined that Pennsylvania's ABS contained unfunded reclamation liabilities for backfilling, grading, and revegetation. In addition, our oversight determined that the ABS was financially incapable of abating or treating pollutional discharges from bond forfeiture sites. In the 1991 notice, we notified Pennsylvania of these deficiencies. In the course of approving a proposed program amendment to the Pennsylvania regulatory program in the 1991 rulemaking, we imposed the required amendment codified at 30 CFR 938.16(h). That amendment required Pennsylvania to demonstrate that the revenues generated by its collection of the reclamation fee will assure that its Surface Mining Conservation and Reclamation Fund (Fund) can be operated in a manner that will meet the ABS requirements contained in the Federal regulations. In addition, the amendment required Pennsylvania to clarify the procedures to be used for bonding the surface impacts of underground mines and the procedures to reclaim underground mining permits where the operator has defaulted on the obligation to reclaim. The 1991 notice stated that Pennsylvania's ABS was no longer in conformance with Federal requirements and mandated that Pennsylvania propose amendments or descriptions of amendments to address the identified deficiencies. Thus, the 1991 notice addressed the same issue covered by the 1991 rulemaking.

In the June 5, 2003, letter the Pennsylvania Department of Environmental Protection (PADEP) responded to the deficiencies noted in our 1991 notice by sending us the program enhancements document. This document, jointly prepared by OSM and PADEP, explains steps that Pennsylvania has taken, and plans to take, to assure appropriate bonding for both land reclamation and postmining discharge treatment on existing active/inactive permits and forfeited sites. In our June 12, 2003, letter to PADEP, we

indicated that the actions taken by Pennsylvania, as described in its June 5, 2003, letter, were sufficient to resolve the 1991 notice. Because we have completed our administrative decision terminating the 1991 notice as a separate and distinct action not subject to the public notice and review procedures governing this rulemaking, we will not respond to comments on terminating that action in this rulemaking.

The purpose of our June 26, 2003, proposed rule was to seek public comment on whether Pennsylvania's actions taken in response to the 1991 notice were sufficient to remove the required amendment at 30 CFR 938.16(h) imposed in the 1991 rulemaking. In that rulemaking, we required the amendment as a result of our review of changes Pennsylvania made to its program at 25 Pa. Code 86.17 which describes Pennsylvania's permit and reclamation fees. In the 1991 rulemaking, we indicated that the proposed revisions raised questions concerning the ability of Pennsylvania's ABS to meet the requirements of 30 CFR 800.11(e) (56 FR at 24689). We also required information from Pennsylvania that would demonstrate that the revenues generated by the collection of the reclamation fee are sufficient.

The requirement was generated because of our uncertainty that the Fund could be operated in a manner that will meet the ABS requirements of 30 CFR 800.11(e). Our uncertainty resulted from information Pennsylvania reported that an analysis of the solvency of the Fund for 1989 and 1990 showed a deficit in both years. In addition, our review of proposed revisions to 25 Pa. Code 86.17 left questions as to the procedures to be used for bonding the surface impacts of underground mines and the procedures to reclaim underground mining permits where the operator has defaulted on the obligation to reclaim. We were uncertain about the relationship of the ABS and fees collected under 25 Pa. Code 86.17 to the reclamation of underground mining permits where bonds were forfeited.

The June 5, 2003, PADEP submission provides a complete description of ongoing and planned activities that address the issues that formed the basis for 30 CFR 938.16(h). Those activities include: (1) The appropriation of \$5.5 million for land reclamation, (2) Continued collection of the permit fee at 25 Pa. Code 86.17(e), (3) Requiring new permits to post conventional bonds and requiring existing active/inactive permits to replace ABS coverage with conventional bonds, and (4) The targeting of significant resources

through a number of financial, and reclamation mechanisms at discharges on current primacy forfeitures covered by the ABS.

After careful consideration of the comments we received, we have found that the actions taken, as described in the June 5, 2003, submission, including Pennsylvania's shift from an ABS to conventional bonds, adequately address the requirements of 30 CFR 938.16(h). Pennsylvania's conversion from the ABS to full cost bonding, renders moot that portion of the required amendment concerned with the solvency of the Fund. Also, the clarification that bonding for the surface effects of underground mining has not been a part of the Fund and has been (and will continue to be) handled by conventional bonds is sufficient to address the remainder of the required amendment. Therefore, 30 CFR 938.16(h) is being removed.

### IV. Summary and Disposition of Comments

#### Public Comments

We asked for public comments on the amendment (Administrative Record No. PA 802.31), and received responses from PennFuture and PCA. We will first discuss the PennFuture comments and then the comments from PCA.

At the outset, however, we wish to clarify the scope of the subject matter for which we requested comments, particularly as it relates to satisfaction of the first portion of the 1991 rulemaking. In the June 26, 2003, **Federal Register** Notice announcing our intention to consider the removal of the required amendment at 30 CFR 938.16(h), we noted that the 1991 notice "dealt with the same subject matter, *i.e.*, the solvency of the State's Surface Mining Conservation and Reclamation Fund, as does the first portion of \* \* \* 30 CFR 938.16(h)." We stated further that:

Since we are now satisfied that the State's bonding program enhancements adequately address our concerns about the ability of the bonding program to ensure the completion of the reclamation plans for all operations on which the operators default on their obligations to reclaim, we are proposing the removal of the first portion of 30 CFR 938.16(h). 68 FR at 37988.

We then clarified the scope of the opportunity to comment as follows:

We are seeking your comments on whether OSM should consider the information submitted by Pennsylvania sufficient to satisfy the required amendment at 30 CFR 938.16(h). Because we decided on June 12, 2003, that PADEP's bonding program enhancements satisfy the concerns expressed in our October 1, 1991, Part 732 Notification Letter, we are not seeking comments on the