

believe that treatment bonds and trust funds will lead to successful treatment of many more discharges than could be successfully treated employing the classic approach to conventional bonding, and will also remove potential obligations to the ABS.

PCA submitted comments on July 28, 2003 (Administrative Record No. PA 802.37). PCA commented that it supported the removal of the required amendment at 30 CFR 938.16(h). However, PCA believed that it was important that the final rulemaking clarify the nature of the removal through four points. We will respond to each point in turn.

In its first point, PCA indicated that it believes that Pennsylvania's proposal for financial assurances at sites with post mining discharges is more detailed and advanced than any proposed Federal regulatory requirements. PCA wanted us to state clearly that Pennsylvania may make changes to its proposed submission and that changes will be subject to public participation.

We acknowledge PCA's support of removal of the required amendment. As we noted earlier, in our proposed rule of June 26, 2003, we requested comments on PADEP's submission of the program enhancements document as it related to removal of the required amendment at 30 CFR 938.16(h). We believe that Pennsylvania has the existing statutory and regulatory authority to implement the provisions discussed in the document. As such, there is no need for the document to be submitted to us for processing as a program amendment under 30 CFR part 732. While Pennsylvania is free to make changes to the document, we will be closely monitoring any such changes to insure that they are based on Pennsylvania's approved program. Any changes that are not based on the approved program will be subject to the program amendment standards of 30 CFR part 732, including public participation.

In its second point, PCA is concerned with Pennsylvania's plans to move ahead with implementing a trust fund system that could put operators at a competitive disadvantage because it is more detailed, comprehensive and rigorous than other states require. PCA is also concerned that the trust fund system could put some operators out of business altogether. PCA requests that PADEP implement a treatment trust fund system that is no more stringent than any Federal program.

We disagree with the premise of the comment. We believe that the steps PADEP is taking are consistent with Federal requirements and, as such, will

not put Pennsylvania operators at a competitive disadvantage.

In its third point, PCA indicated that there exists a bonding crisis in the mining industry making it difficult for operators to obtain bonds and it believes that surety bonding will not be available to address postmining discharges. PCA wants us and PADEP to acknowledge the need to review options in light of the bonding crisis and to ensure that our efforts to implement the joint workplan are designed to avoid further worsening of bonding difficulties.

We acknowledge the problems operators have in securing bonds. We believe that the trust fund option described as part of the bonding enhancements document is a valid alternative that will assist operators in their meeting reclamation requirements without adding to the burden of securing conventional bonds. The trust fund provisions will also assist in securing the release of conventional bonds, thus assisting operators to secure conventional bonds for other minesites.

In its fourth and final point, PCA indicated that operators have been treating discharges from minesites for years. Often, these treated discharges are entering streams that are severely degraded which means the treatment has little or no benefit to the hydrologic balance of the receiving watershed. In those cases, PCA indicated that it may not be prudent for PADEP to require operators to post a conventional bond or a trust fund for perpetual treatment.

As previously stated, the operator remains liable for completing the reclamation plan, including water treatment, and the regulatory authority has a programmatic accountability to assure that adequate financial resources are available in the event of bond forfeiture. Therefore, we do not agree with this comment.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Pennsylvania program (Administrative Record No. PA 802.31). On July 3, 2003 (Administrative Record No. PA 802.32), MSHA's Wilkes-Barre Office wrote to us noting that it had no comments on the proposal.

On July 16, 2003 (Administrative Record No. PA 802.33), MSHA's New Stanton Office wrote to us indicating that before a mine is abandoned, MSHA requires that all underground mine openings are sealed and refuse piles and impoundments are abandoned according to its requirements at 30 CFR 77.215. MSHA observed that there are

many impoundments in Pennsylvania attached to bankrupt mines that have not been abandoned. MSHA noted that the conversion of all active and inactive mining permits to a full cost conventional bond should allow Pennsylvania to reclaim these sites. MSHA concluded by noting that it had no objections to removing the required amendment at 30 CFR 938.16(h).

We agree with MSHA's comments.

Environmental Protection Agency (EPA) Comments

Under 30 CFR 732.17(h)(11)(i) we requested comments on the amendment from EPA (Administrative Record No. PA 802.31). EPA responded on July 17, 2003 (Administrative Record No. PA 802.34) that it appears that PADEP has provided sufficient information to justify removal of the required amendment at 30 CFR 938.16(h). EPA further indicated that it determined that there are no apparent inconsistencies with the Clean Water Act or other statutes or regulations under its jurisdiction.

V. OSM's Decision

Based on the above findings, we are removing the required amendment at 30 CFR 938.16(h).

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