

09–01, General Requirements for Mining Plans; (5) NDAC 69–05.2–12–12, Bond release requirements; (6) NDAC 69–05.2–16–04, Sediment control measures under the general water management requirements; (7) NDAC 69–05.2–16–05, Water discharge reports; and (8) NDAC 69–05.2–16–09, Removal of water management structures.

We announced receipt of the proposed amendment in the June 3, 2003, **Federal Register** (68 FR 33035). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record No. ND–HH–08). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on July 3, 2003. We did not receive any comments.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment.

A. Revisions to North Dakota's Rules or Statutes That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations and/or SMCRA

1. NDAC 69–05.2–01–02(120), Definition of Valid Existing Rights.(30 CFR 761.5)

2. NDAC 69–05.2–04–01.1 through 01.7, Processing Requests for Valid Existing Rights and Exceptions from Areas Prohibited from Mining.

a. NDAC 69–05.2–04–01.1, Areas Unsuitable for Mining—Areas where surface coal mining operations are prohibited or limited (30 CFR 761.11).

b. NDAC 69–05.2–04–01.2, Areas Unsuitable for Mining—Exception for existing operations from areas where mining is prohibited (30 CFR 761.12).

c. NDAC 69–05.2–04–01.3, Areas Unsuitable for mining—Procedures for relocating or closing a public road or waiving the buffer zone for a public road (30 CFR 761.14).

d. NDAC 69–05.2–04–01.4, Areas Unsuitable for Mining—Procedures for waiving the prohibition on mining within the buffer zone around an occupied dwelling (30 CFR 761.15).

e. NDAC 69–05.2–04–01.5, Areas Unsuitable for mining—Submission of requests for valid existing rights determinations (30 CFR 761.16).

f. NDAC 69–05.2–04–01.6, Areas Unsuitable for mining—Processing requests for valid existing rights determinations (30 CFR 761.16(c)–(g)).

g. NDAC 69–05.2–04–01.7, Areas Unsuitable for mining—Commission

obligations at time of permit application review (30 CFR 761.17).

Because these proposed rules contain language that is the same or similar to the corresponding Federal regulations, we find that they are no less effective than the corresponding Federal regulations.

B. Revisions to North Dakota's Rules That Are Not the Same as the Corresponding Provisions of the Federal Regulations

1. NDAC 69–05.2–05–01, Copies and Format of Permit Applications

This revision of North Dakota's rules would allow permit applications to be filed in an electronic format approved by the North Dakota Public Service Commission. In addition, it would require that the applicant send a complete copy of the permit application to the Bureau of Land Management (BLM) when Federal lands are located in the permit area.

The Federal regulations at 30 CFR 777.11(a)(3) state that an application shall “be filed in the format required by the regulatory authority.” Therefore the State's revision concerning electronic filing is allowed and is no less effective than the Federal rules. There is no Federal counterpart to the North Dakota requirement that a copy of the application be sent to BLM and OSM when Federal lands are located in the permit area; it is therefore no less effective than the Federal rules.

2. NDAC 69–05.2–16–04, Sediment Control Measures Under the General Water Management Requirements

Under this proposed change, sediment ponds remain the primary structure for treating runoff from disturbed areas. However, the proposal allows the use of sediment ponds or “other sediment control measures” to control runoff from disturbed areas. The term, “other sediment control measures,” is defined as the use of the best technology currently available to meet applicable effluent limitations and, to the extent possible, minimize erosion and prevent additional contributions of sediment to streamflow or to runoff outside the permit area. The term includes a number of different methods such as sumps, check dams, berms, silt fences, bale dikes, sediment filters, riprap, mulches, and other measures to reduce runoff, trap sediment or treat runoff water. The use of “other sediment control measures” is limited to small disturbed areas or reclaimed areas that have been properly stabilized against erosion and must be approved by the State Department of Health.

These changes are consistent with the new rules recently adopted by the U.S. Environmental Protection Agency (EPA) that allow the installation of best management practices as the standard for treating runoff from reclaimed lands in the western United States (January 23, 2002, at 67 FR 3370). Therefore they are no less effective than the Federal regulations at 30 CFR 816.42.

3. NDAC 69–05.2–16–05(1)(b)(3), Water Discharge Reports

Currently, copies of the North Dakota pollutant discharge elimination system (NDPDES) report must be submitted to the North Dakota Public Service Commission on the schedule required by the NDPDES permit. The rule states that reports have to be filed on a quarterly basis. However, the proposed revised rule would require mining companies to submit the report on the same schedule as required by the State Health Department. The State Health Department has modified some NDPDES permits for some mines to require reports on a semiannual basis. EPA gives this authority to State Health Departments. Other surface water monitoring reports must be submitted quarterly. Based on this, the proposed State rule is no less effective than the Federal regulations.

The Federal regulations at 30 CFR 816.41(e)(2) state that “The reporting requirements of this paragraph do not exempt the operator from meeting any National Pollutant Discharge Elimination System reporting requirements.”

The proposed revision in the State rules are no less effective than the Federal regulations.

4. NDAC 69–05.2–16–09, Removal of Water Management Structures

The proposed revision concerns requirements for the removal of ponds and other sediment control structures. Added language requires “other sediment control structures” to remain in place for at least two years following the last seeding in the reclaimed watershed. This change is connected to the proposed change (at NDAC 69–05.2–04) to allow the substitution of other sediment control structures for sedimentation ponds once a reclaimed tract is topsoiled and stabilized against erosion. As in the Federal rule (30 CFR 816.46(b)(5)), these structures cannot be removed unless approved by the regulatory authority. The proposed State rule is no less effective than the Federal regulations.