

Dated: December 18, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[IN-153-FOR; Administrative Cause No. 02-034R]

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Indiana regulatory program (Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The Indiana Department of Natural Resources (IDNR or Indiana) proposed revisions to and additions of rules concerning protection of ground water quality. Indiana revised its program to provide additional safeguards for ground water.

EFFECTIVE DATE: December 31, 2003.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

- I. Background on the Indiana Program
- II. Submission of the Amendment
- III. OSM's Findings
- IV. Summary and Disposition of Comments
- V. OSM's Decision
- VI. Procedural Determinations

I. Background on the Indiana Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * * and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Indiana

program effective July 29, 1982. You can find background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval, in the July 26, 1982, **Federal Register** (47 FR 32071). You can also find later actions concerning the Indiana program and program amendments at 30 CFR 914.10, 914.15, 914.16, and 914.17.

II. Submission of the Amendment

By letter dated September 3, 2003 (Administrative Record No. IND-1719), IDNR sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). IDNR proposed to amend its program by adding new definitions, application requirements, and performance standards concerning the protection of ground water quality. IDNR is amending the Indiana program because the Indiana Groundwater Protection Act of 1989 (Indiana Code (IC) 13-18-17) requires any State agency with jurisdiction over an activity that may affect the quality of Indiana's ground water to adopt rules to apply the groundwater quality standards established by the Indiana Water Pollution Control Board (WPCB). In accordance with IC 13-18-17, WPCB adopted ground water quality standards at 327 Indiana Administrative Code (IAC) 2-11. WPCB's rule at 327 IAC 2-11-2 specifically requires IDNR to adopt rules to apply the standards established in 327 IAC 2-11 to the facilities, practices, and activities it regulates.

We announced receipt of the proposed amendment in the October 15, 2003, **Federal Register** (68 FR 59352). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on November 14, 2003. We received comments from one industry group, one citizens group, and one Federal agency.

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 as described below.

A. Definitions

Indiana added the definitions discussed below from WPCB's definitions at 327 IAC 2-11-3(5), (8) and (11). Indiana added these definitions to help in implementing its

new performance standards concerning the protection of ground water quality at 312 IAC 25-6-12.5 and 25-6-76.5.

1. At 312 IAC 25-1-45.5, Indiana is adding the following definition for "drinking water well."

"Drinking water well," for the purposes of 312 IAC 25-6-12.5 and 312 IAC 25-6-76.5, means a bored, drilled, or driven shaft or a dug hole that meets each of the following:

- (1) Supplies ground water for human consumption.
- (2) Has a depth greater than its largest surface dimension.
- (3) Is not permanently abandoned under 312 IAC 13-10-2.

Although there is no direct Federal counterpart definition for a drinking water well, Indiana's proposed definition is not inconsistent with the Federal definition of "drinking, domestic, or residential water supply" at 30 CFR 701.5. The Federal definition means, in part, water received from a well for direct human consumption or household use. Therefore, we are approving Indiana's definition at 312 IAC 25-1-45.5.

2. At 312 IAC 25-1-60.5, Indiana is adding the following definition for "Ground water management zone."

"Ground water management zone" means a three (3) dimensional region of ground water around a potential or existing contaminant source where a contaminant is or was managed to prevent or mitigate deterioration of ground water quality such that the criteria established in 312 IAC 25-6-12.5(a) or 312 IAC 25-6-76.5(a) are met at and beyond the boundary of the region.

There is no Federal counterpart definition for the term "ground water management zone." However, Indiana's proposed definition is not inconsistent with sections 515(b)(10) and 516(b)(9) of SMCRA or the Federal requirements at 30 CFR 816.41 and 817.41 concerning protection of the hydrologic balance, including ground water quality protection. Therefore, we are approving Indiana's definition at 312 IAC 25-1-60.5.

3. At 312 IAC 25-1-109.5, Indiana is adding the following definition for "Property boundary."

"Property boundary," for the purposes of 312 IAC 25-6-12.5 and 312 IAC 25-6-76.5, means the edge of a contiguous parcel of land owned by or leased to the permittee. Contiguous land shall include land separated by a public right-of-way, if that land would otherwise be contiguous.

There is no Federal counterpart definition for the term "property boundary." However, Indiana's proposed definition is not inconsistent with the Federal definition of "permit area" at 30 CFR 701.5 or the Federal requirements concerning permit